*PART-I* - COURT OBSERVATION & LEGAL AID

We the students of S.V.College of law, Tirupathi 2013-16 batch 3 Year final LL.B and 2011-16 batch 5 Year final LL.B students, with the permission of Hon’ble III rd Additional District Judge of Tirupathi visited Tirupathi courts for one week regulary from Apil, 25th to 30th 2016 during this period we observed Civil and Criminal cases Trail proceedings going on.

In the last date of Court Observation Practical Training Hon’ble III rd Additional District Judge and our respected Principal explained about the importance of legal profession and the role of the students in legal literacy and about concept of Legal Aid. We noted the following in this course of observation and practical work.

Human Rights are those rights which a person has simply because he or she is a human being. For the proper development of a human being, some rights are essential. These rights belong to them because of their very existence and became operative on their birth. Human Rights provide legal mandate to fulfill human needs. Basic human rights and freedom are inherent in mankind. Human Right is a concept that has been constantly evolving with the passage of time. It seems that the concept of Human Rights is as old as Human Civilization. Human Rights are traditionally known as “Natural Rights” and can be said to have originated from the divine law of nature. The idea of Human Rights is used to affirm that individuals have moral rights by the very fact of being human which no Society or State should deny. Abstract Notions of Human Rights assumed a more concrete and universally accepted form with the adoption of the Universal Declaration of Human Rights (UDHR) in the year 1948. Human Rights get transformed into Legal Rights when they are recognized and incorporated in the law of the state. Therefore, practically all the Civil and Political Rights have been incorporated in the Constitution of India as Fundamental Rights whereas Economic, Social and Cultural Rights have been included as Directive Principles of State Policy. Another significant step was the enactment of the Protection of Human Rights Act in the year 1993 which defines Human Rights as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India”.

The mere embodiment of a right in a covenant is not sufficient but it is necessary that the legal system should strive to achieve through appropriate laws and policies. In fact the idea of Human Rights is much wider. Under the constant gaze of judiciary, our law ensures basic rights even to those who are suspected of involvement in crimes. The increasing importance that the concept of Human Rights has attained globally is indeed impressive. The Indian Criminal Justice System is based on an adversariai model and characterized by the concept of ‘due process’, which involves numerous rights of accused who are facing trial in criminal courts. These rights consistently insisted upon by the Indian jurisprudence include Right to Life & Liberty; Right Against Torture or Inhuman Degrading Treatment; Right to Due Process & Fair Treatment Before Law; Right of Legal Aid & Advice etc., Right to Legal Aid in the Criminal Justice System is considered as nonderogable and an essential constituent of fair trial both in International Human Rights Law and Domestic Laws. Through its various pronouncements, the Supreme Court of India has been successful in creating Human Rights Jurisprudence and helping the poor people of our Country. The role of the judiciary, of course is primarily to ensure the most effective and proper implementation of Rule of Law which begins from the protection of Human Rights.

***CONCEPT AND MEANING OF LEGAL AID***

The concept of Legal Aid is very spirit of equality and its movement is dedicated to the principle of equal justice to the poor. It requires a systematic approach in response to the prevailing inequalities and injustices existing in the society. Legal Aid is a vital limb of our Constitution.

Legal Aid means giving to persons of limited means gratis, legal advice and legal assistance in civil and criminal matters in the courts of law. Its primary object is to make it impossible for any man, woman or child to be denied equal protection of the law simply because he or she is poor. Legal Advice is co-related with Legal Aid. But legal advice is quite independent of any legal proceedings in any court of law or tribunal. Its nature is not only remedial but has preventive potential also. Legal Aid has been taken to mean the organized effort or the Bar, the community and the Government to provide the services of lawyers free or for a token charge to persons who cannot afford to pay lawyer’s fee.

The New Encyclopedia Britannica defines Legal Aid as: “The Professional Legal Assistance given, either free or for a nominal sum, to indigent persons in need of such help”.

In the words of Justice P.N.Bhagwati:

“The Legal Aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those, who have to resort to it for enforcement of the rights given to them by law. In such an arrangement the poor and the illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts.”

Thus, Legal Aid is a Social Assistance or help extended to the one who is facing a legal problem but cannot afford, being handicapped by his scarce means and resources, to stand equal to his opposite party in his exercise to get justice. Legal Aid has now been accepted as a function of the welfare state which implies affirmative action from the state, providing effective access to individuals and groups to avail themselves of legal entitlements. Legal Aid is a service of the lawyers in grants to the clients who do not have means to afford for litigation. If, poor persons are unable to approach the courts; it could be denial of equal protection of the law, simply because the aggrieved person has no means to approach the court. Hence Legal Aid has now been recognized as an essential part or function of the administration of justice, particularly in democratic and socialistic structure of society and polity.

The provisions of legal aid to the poor and the disadvantaged exist in all civilized countries, often guided by charitable and philanthropic concerns. In a democratic set-up, the philosophy of Legal Aid has acquired a new meaning, with an emphasis on the concept of equality of all human beings, increasingly drawn from the Universal Principles of Human Rights.

***INTERNATIONAL PERSPECTIVE OF RIGHT TO LEGAL AID***

The right of access to justice and to Legal Aid in the Criminal Justice System is considered non-derogable and an essential fair Trial Standard both in International Human Rights Law and in Domestic Law.

Article 10 of the Universal Declaration of Human Rights, 1948 Provides:

Everyone is entitled in full equality to a fair and public hearing by an Independent and Impartial Tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 14 of the international Covenant on Civil and Political Rights (ICCPR), 1966 provides:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Further, Article 14(3) (d) recognizes:

The right of an accused to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

Thus, Article 14 (3) (d) entitles the person facing the criminal charge either to defend himself in person or through the assistance of a counsel of his choice and he does not have legal assistance, to be informed of his right and provide him legal assistance without payment.

***INDIA***

India is a democracy where the rule of law is a fundamental principle in its governance and is important since for the preservation of peace and prosperity of the society, it is imperative the rule of law should prevail. The importance of Legal Aid assumes a new dimension due to the fact that India is a developing country and in order to confront the problems, impediments and difficulties faced on the way to development and growth, Legal Aid for the poor and the destitute and deprived members of the society is an indispensable part of the system.

The Founding Fathers of our Constitution were themselves Freedom Fighters who had seen civil liberties of our people trampled under foreign rule, and who had themselves been incarcerated for long period under the formula ‘Na Vakeel, na daleel, na appeal (No lawyer, no haring, no appeal). Many of them were lawyers by-profession, and knew the importance of counsel particularly in criminal cases. It was for this reason that they provided for assistance by counsel under Article 22(1) and that provision must be given the widest construction to effectuate the intention of the Founding Fathers.

The Preamble of the Indian Constitution, Inter-Alia provides for securing to all citizens equality of status and of opportunity and Justice, Social, Economic and Political. Social Justice, in the words of Justice Iyer, embraces the other preambular words within its fold, when he defines:

“Social Justice is a generous concept which assures to every members of the society a fair deal. Any remedial injury, injustice, inadequacy or disability suffered by a member, for which he is not directly responsible, falls within the liberal connotation of social justice. Accordingly, with a view to make the channels of justice available to the poor, free legal services have been incorporated in the legal system. In order to ensure equality of justice, it is not only sufficient that law treats rich and poor equally, but it is also necessary that the poor must be in a position to get their rights enforced and should put up proper and adequate defence when they are sued for any liability. Law is useless, a futile exercise of legislative power, unless the machinery of justice that gives life to the law and makes it actively effective. The machinery of justice must, therefore, be readily accessible to all equally irrespective of their social, economic, geographical and biological or any other types of differences. If this is not done the law despite its equality will become discriminatory against the poor.

***THE CONSTITUTIONAL AND STATUTORY PROVISIONS FOR LEGAL AID***

The Constitution treats all citizens as being equal and provides them equal protection under the law. Article 21 of the Constitution says: “No person shall be deprived of his life or personal liberty except according to procedure established by la”. This article guarantees the protection to life and personal liberty. When any person is to be deprived of his life or personal liberty, the state is under a mandatory obligation to follow the procedure established by law. This is the most important Human Right in present day scenario.

In our own country; Article 22(1) of the Constitution states: “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for which arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice”.

Article 39-A of the constitution provides that the state shall secure that the operation of the legal system promote justice, on a basis of equal opportunities, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This article was added to the Constitution pursuant to the new policy of the Government to give legal aid to economically backward classes of people. To fulfil Constitutional obligation, in 1987 the Legal Services Authority Act was passed. Section 12 of the Legal Services Authorities Act 1987 prescribes the criteria giving legal services to the eligible persons.

Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at state expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority. The provisions of the Act, is really a welcome development in the field of legal aid. In order to reach out to the common people, NALSA has come up with a project to setup legal aid clinics in all villages, subject to financial viability. A legal aid clinic is a facility to assist and empower people who face barriers to ‘access to justice’.

***CODE OF CRIMINAL PROCEDURE***

The Cr.P.C provides that in all criminal prosecutions, the accused has right to have legal assistance of a counsel.

Section 303 any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this code, may of right be defended by a pleader of his choice.

Section 304 (1) where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the court that the accused has not sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the state.

Section 41 D where any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

From the reading of aforesaid provisions it is evident that in a trial before the court of sessions if the accused is not represented by a pleader, the court shall assign a pleader for his defence at the expense of the state if the accused has not sufficient means. But this right to free legal service would be illusory for an indigent accused unless the Magistrate or Sessions Judge before whome he is produced informs him of such right.

As discussed above the there are sufficient provisions in our domestic law to fulfill the requirement of right to legal aid. However, considering that most of the accused persons in India are uneducated and poor and are often unable to engage lawyers for their defence, it is highly important and necessary that proper arrangement are made for making the legal services available to them.

***JUDICIAL PRONOUNCEMENTS AND RIGHT TO LEGAL AID***

Human Rights are Fundamental Rights. Human Rights are fundamental for the simple reason that human rights are so primary and necessary that they require no sanction from state. Legal Aid and speedy trial have now been held to be fundamental rights under Article 21 of the Constitution available to all persons and enforceable by the courts in India. The state is under a duty to provide lawyer to a poor person and it must pay to the lawyer his fee as fixed by the Court. Human Rights are never safe in a country unless an activist judiciary with pragmatic humanism becomes ‘the sentinel on the qui-vive’ through its various pronouncements; the Supreme Court of India has been successful in creating human rights jurisprudence and helping the poor people of our country. The role of the judiciary, of course is primarily to ensure the most effective and proper implementation of Rule of Law begins from the protection of Human Rights. The credibility of the judicial process and public faith in it is an index of civilization. The Apex Court has construed domestic law in the light of the provisions of International Covenants which India has ratified.

In Queen Empress Vs Pohpi & Others (1893), Justice Mahmood (Dissenting) held that an appeal against conviction could not be disposed of in absence of the accused and that he must be heard in person, if he was not represented by counsel. The view taken by Mahmood, J. assimilated even the modern concept under Articles 21 & 39A of the Constitution.

In Maneka Gandhi Vs Union of India the court held that the procedure under Article 21 which deprived a person of his life or liberty should be just, fair and reasonable. Now, a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as just, fair and reasonable. It is only a lawyer who is conversant with law who can properly defend an accused. Further the court said that the provision relating to fundamental rights should be interpreted widely; Bhagwati.J said;

“The attempt of the court should be to expand the reach and ambit of the Fundamental rights rather than to attenuate their meaning and content by a process of judicial construction.”

Krishna Iyer, J., in Sunil Batra’s case (No. 2) Vs Delhi Administration said that “Today, Human Rights jurisprudence in India has Constitutional status”.

In H.M.Hoskot Vs State of Maharashtra court held that right to free legal aid at the cost of the state to an accused who can’t afford legal services for reasons of poverty, indigence or incommunicado situation is part of fair, just and reasonable procedure under Article 21 of the constitution. The court pointed out that:

“Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power for steering the wheels of equal justice under the law. A free legal service to the poor and the needy is an essential element of any “reasonable fair and just” procedure. It is not necessary to quote authoritative pronouncements by judges and jurists in support of the view that without the service of a lawyer an accused person would be denied “reasonable, fair and just procedure”.

Regarding the right to legal aid, Krishna Iyer, J.declared, “This is the state’s duty and not government charity”.

In Nandini Satpathy Vs P.L. Dani the court held that the accused must be allowed legal representation during custodial interrogation and the police must wait for a reasonable time for the arrival of a lawyer. The Apex Court observed:

“Not that a lawyer’s presence is a panacea for all problems of involuntary self-incrimination, for he cannot supply answers or whisper hints or otherwise interfere with the course of questioning except to intercept where intimidatory tactics are tried, caution his client where incrimination is attempted and insist on questions and answers being noted where objections are not otherwise fully appreciated. He cannot harangue the police but may help his client and complain on his behalf, although his very presence will ordinarily remove the implicit menace of a police station”.

In Hussainara Khatoon Vs Home Secretary, State of Bihar, the Supreme Court has observed that it is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty or indigence, to have free legal services provided to him by the state, and the state is under a constitutional mandate to provide a lawyer to such accused person if the needs of justice so require. The court further held that if free services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21 of the Constitution.

In Khatri Vs State of Bihar, the Supreme Court emphasized that the state Governments cannot avoid their constitutional obligation to provide free legal service to the poor accused by pleading financial or administrative inability. The obligation to provide free legal service to a poor accused arises not only when the trial begins but also when he is for the first time produced before the magistrate. It is at that stage that the accused gets his first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody and so the accused needs competent legal advice and representation at the stage. The accused can claim free legal aid after he has been sentenced by a court, but is entitled to appeal against the verdict.

Justice Bhagwati while delivering the judgement in the case of Kadra Pahadia Vs State of Bihar directed that the petitioners must provided legal representation by a fairly competent lawyer at the cost of the state. Since legal aid in a criminal case is a fundamental right implicit in Article 21 of the Constitution.

In Sheela Barse Vs State of Maharashtra the court held that legal assistance at the cast of the state should be given to indigent persons under police custody also, besides the under trials and convicts which is a constitutional imperative by Article 39-A and also by Article 14 and 21 of the Constitution.

In Centre of Legal Research Vs State of Kerala, it has been held that in order to achieve the objectives in Article 39-A, the State must encourage and support the participation of voluntary organizations or social action groups in operating the legal aid programme. The legal aid programme which is meant to bring social justice to the people cannot remain confined to the traditional or litigation oriented programme but it must take into account the socio-economic conditions prevailing in the country and adopt a more dynamic approach. The voluntary organizations must be involved and supported for implementing legal aid programme and they should be free from Government control.

In Suk Das Vs Union Territory, the court held that the bulk of the Indian people living in rural areas are illiterate and are not aware of their rights. Even literate people do not know what their rights are under the law. In the circumstances, it would make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal service. “Legal aid would be an idle formality if it was to depend upon a specific application by such poor or ignorant person for such legal assistance”

***CONCLUSION***

It can be concluded that the protection of fundamental human rights is of cardinal importance. ‘There is no better religion than protection of human rights of human beings by human beings and there is no better service to mankind than respecting the human rights of human beings. Right to legal aid is one of the most important fundamental human rights. It aims at promoting larger interests, harmony and jurisprudential cohesion. The object and purpose of providing legal aid to unrepresented accused persons is to see that the accused gets free and fair trial. The provisions in Indian law for legal aid are adequate enough to meet our needs but their implementation is not adequate and proper. The emergence of human rights jurisprudence in the light of human rights philosophy is a positive signal indicating that judiciary has undertaken the task of protecting the right to free legal aid. The Apex Court in India has laid down certain guidelines on right to legal aid and these are of a binding nature to be followed properly for the effective implementation of this right.