

SHIFT FROM LEGAL AID TO LEGAL SERVICES:- CONSTITUTIONAL PROSPECTIVE

Justice D.M. Dharmadhikari
Former Judge,
Supreme Court of India

1. The provision of Free Legal Aid was introduced in the Constitution by adding Article 39-A by Constitution 42nd (amendment) Act 1976 w.e.f. 3.1.1977. Addition of such a provision to Directive Principles of State Policy was found necessary "to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
2. To give effect to the Directive Principles of State Policy under Article 39-A Legal Services Authority Act 1987 was enacted by the Parliament providing for setting up of National Legal Service Authority at the national level, State Legal Service Authority in every State and District and Taluk Legal Service Authority at the District and Taluk level respectively. The principal object of the legislation was to ensure that "Legal System promotes justice on the basis of equal opportunity" and to that end provide legal aid to poor and needy.
3. Even before introduction of Art. 39-A and the Central Legislation passed to implement the same, the State had an obligation to provide access to justice to all citizens irrespective of their geographical, social, economic and political conditions. In the Preamble of the Constitution itself, the people of India through their democratic institutions have committed themselves to give "justice, social, economic and political" to all citizens of the country and also to protect their Fundamental Human Rights which includes Liberty of thought, Expression, Belief, Faith and Worship. The other commitment in the Preamble of securing to all citizen "equality of status and opportunity" also implies providing machineries to give access to justice to all, i.e. rich or poor, affluent or marginalized, able or disabled and other kinds of social disabilities.
4. Article 14 of the Constitution is also a commitment by the State that "It shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Article 14 of the Constitution containing guarantee of equality requires State to assume a pro-active role that is of taking positive steps for extending laws equally to all concerned and to extend "protection of laws" to those who need such protection. Article 21 containing Fundamental Right of Life and Personal Liberty has been expansively interpreted by the Supreme Court in a series of cases to hold that the action of the State of arrest and holding a trial against the offender requires grant of full opportunity to the accused to defend himself with the assistance of a lawyer. Therefore, providing legal aid and legal services have been held to be a Fundamental Right against deprivation of Life and Personal Liberty. The Constitution thus obligated the State to move forward from legal aid to providing suitable and adequate legal services not only in respect of Fundamental Rights concerning Life and Personal Liberty but also other rights relating to social, economic and

