

B.A. LL.B VI SEMESTER

UNIT-1 MOOT COURT

TOPIC:-DUTY TO RENDER LEGAL AID

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INTRODUCTION:-

Article 39-A of the Indian Constitution provides that the operation of the legal system promotes justice , on a basis of equal opportunity, and shall, in particular, provide free legal aid , by suitable legislation 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.

1) Duty To Render Legal aid -

- Rule 46 of Section VI of Chapter II of Part VI of Bar council of India Rules makes it clear that , Every Advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitle to legal assistance even though he can not pay for it fully or adequately and that within the limits of an advocates economic condition, free legal assistance to the indigent and oppressed is one of the highest obligation an advocate owes to society.

2) Entitlement to Legal services -

Every person who has to file or defend a case shall be entitled to legal services under this act if he is:-

A) a member of a scheduled caste or scheduled tribe ; or

B) a victim of trafficking in human beings or bear or beggar as referred to in Article 23 of the Constitution , or

C) a women or a child , or

D) a mentally ill or otherwise disabled person ; or

E) a person under circumstances to the undeserved want such as being victim of a mass disaster , ethnic violence violence, caste atrocity, flood, drought, earthquake or industrial disaster ; or

F) an industrial workman ; or

G) in custody , including custody in a protective home within the meaning of clause (g) of section 2 of the immoral traffic (Prevention) Act,1956, or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act,1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental health Act, 1987; or

H) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State govt. if the case is before a court other than the supreme court , and less than rupees twelve thousand or such other higher amount as may be prescribed by the central govt, if the case is before the supreme court.

3) According to Advocate Act , 1961 :

- **I) Section. 6(2)(b) -**

A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of the giving legal aid or advice in accordance with the rules made in this behalf .

- **II) Section. 7(1)(ib) -**

The functions of the Bar council of India shall be to organize legal aid to poor in the prescribed manner .

- **III) Section 7(2)(b) -**

Bar council of India may constitute one or more funds in the prescribed manner for the purpose of giving legal aid or advice in accordance with the rules made in this behalf .

- **IV) Section. 15(2)(ga) –**

A Bar Council of India may make rules so as to provide for the constitution of one or more funds by a bar council for the purpose of giving financial assistance or giving legal aid or advice referred to in sub section (2) of section 6 and sub-section (2) of section 7.

- **V) Section 15(2)(gb) –**

A Bar council may make rules to provide for organization of legal aid and advice to the poor , constitution and functions of committees and sub-committees for the purpose and description of proceedings in connection with which legal aid or advice may be given.

4) Constitution of legal aid committees -

According to Sec.9-A -

1) A Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members, not exceeding nine but not less than five, as may be prescribed.

2) The qualifications, the method of selection and the term of office of members of a legal aid committee shall be such as may be prescribed.

5) A Legal services not to be provided in certain cases -

1) Proceedings wholly or partly in respect of -

(a) defamation

(b) malicious prosecution

(c) a person charged with contempt of court proceedings ; and

(d) perjury

2) Proceedings relating to any election.

3) Proceedings in respect of economic offenses and offenses against social laws, such as Protection of Civil Rights Act, 1955 , and the Immoral Traffic (Prevention) Act, 1956, unless in such cases the aid is sought by the victim.

6) Honorarium Payable to legal Service

Advocates -

- 1) The legal service advocate shall be paid such honorarium as may be fixed by the committee.
- 2) No legal service advocate to whom any is assigned either for legal advice or for legal services shall receive any fee or remuneration whether in cash or in kind of any other advantage, monetary or otherwise, from the aided person or fro, any other person on his behalf.
- 3) The legal service advocate who has completed his assignment shall submit a statement showing the honorarium due to him together with the report of work done to the secretary of the committee, who shall, after due security sanction the fee and expenses payable to him. In case of any dispute on the quantum payable to the legal service advocate, the matter shall be placed before the chairman for decision.