

Right to Legal aid

The Supreme Court recently in its two judgements upheld the right to consult and be defended by a legal practitioner as constitutional right available to all accused persons by virtue of Articles 21 and 22(1) of the Indian Constitution. While upholding the death sentence handed out in the case of **Ajmal Kasab vs. State of Maharashtra** the apex Court held that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, one would be provided legal aid at the expense of the State.

The Court remarked that the obligation to provide him with a lawyer at the commencement of the trial is absolute unless the accused voluntarily makes an informed decision and tells the court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally. Failure to do so would vitiate the trial and the resultant conviction and sentence, if any, given to the accused.

The Court in the decision directed all the magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned magistrate liable to departmental proceedings.

The Supreme Court, again, in **Rajoo @ Ramakant vs State Of M.P.** ruled that free assistance must be provided to all poor accused, irrespective of the severity of the crime attributed to them, at every stage of the three-tier justice delivery system and could not be restricted to the trial stage only. Neither the Constitution nor the Legal Services Authorities Act makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody. This makes it abundantly clear that legal services shall be provided to an eligible person at all stages of the proceedings, trial as well as appellate. It is also important to note that in view of the constitutional mandate of Article 39-A, legal services or legal aid is provided to an eligible person free of cost.