

LEGAL AID: AN ACCESS TO JUSTICE IN INDIA

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ABSTRACT

In India, legal assistance is an essential component of the justice system that is intended to guarantee that all individuals, regardless of their financial situation, have access to legal resources and impartial representation. The article examines the development, structure, and effects of legal assistance in India, focusing on the constitutional foundation of the program and the methods used to carry it out. Article 39A of the Indian Constitution, which requires the state to offer free legal help to ensure that justice is not denied owing to economic or other disadvantages, contains the fundamental elements of legal aid. The National Legal Services Authority (NALSA) and a network of state and local legal services organizations have been established as a result of this directive, which is backed by the equality principles included in Articles 14, 21, and 22 and authority for district legal services. These organizations strive to carry out legal assistance initiatives, advance legal literacy, and enable Lok Adalats as a means of alternative conflict resolution.

The article focuses on the important decisions of the courts that have broadened the definition of legal aid and guaranteed its incorporation within the right to a fair trial. It also looks at the different requirements for qualifying and the services that fall within the purview of legal aid, such as awareness campaigns, legal counsel, and representation. Legal assistance in India has significantly improved access to justice while overcoming obstacles including scarce funding and outreach. Its efficacy has been further increased by the integration of technology and neighbourhood-based projects. The study's findings indicate that even though India's legal assistance system is strong, ongoing efforts are needed to remove current obstacles and completely fulfill the promise of justice for all set forth in the constitution.

Keywords: Legal Aid, NALSA, Article 39-A, Justice, Attorney.

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INTRODUCTION

The goal of legal aid is to ensure that everyone, regardless of financial situation, has access to justice by helping those who cannot afford legal representation or the judicial system. It is a vital component of guaranteeing equality and justice within the legal system. A means test is frequently used to determine eligibility for legal aid, demonstrating financial necessity, while a merits test is used to determine the case's legal merit. Legal aid comes in many forms: civil legal aid for non-criminal cases such as immigration, family law, and housing; criminal legal aid for defense in criminal cases to guarantee a fair trial; and advice and assistance, which provides basic legal rights and obligations guidance. Legal aid providers include NGOs and government-funded organizations as well as private attorneys' offices and law companies that provide pro bono services.

Legal aid has a huge influence because it makes justice more accessible and guarantees that everyone, regardless of financial situation, may defend their rights and have a fair trial. Additionally, it improves legal awareness by informing the public about their rights and the workings of the legal system and promotes social equality by lessening inequalities in the legal system. However, the system faces difficulties such as low finance, which may limit the quantity and calibre of services offered; problems with accessibility brought on by informational and geographic barriers; and the requirement to guarantee that customers receiving legal aid obtain counsel that is just as strong as that given to those who can afford private attorneys. Despite these difficulties, legal assistance continues to support equality and justice as pillars of a just and fair legal system.

ORIGIN OF LEGAL AID WORLDWIDE

Legal aid has come a long way over the years, beginning in ancient civilizations. Roman law permitted the appointment of legal representatives for the impoverished, and ancient Greece and Rome offered early types of legal assistance for people who could not pay it. Canon law required the church to help those in need, therefore during the Middle Ages in Europe, the church was a major provider of aid to the impoverished, including legal assistance. The Statute of Westminster, which offered legal aid to individuals unable to pay a lawyer and signalled the start of a codified system, was the early source of modern legal aid in England in 1495. Additional advances occurred in the 19th and early 20th centuries, especially in the US and the UK. The working class's demand for legal aid was brought to light by the Industrial Revolution,

which sparked movements like the Poor Man's Lawyer in the UK. The US saw the emergence of legal aid groups, one of the first of which was the New York Legal Aid Society, established in 1876.

ORIGIN IN INDIA

A major turning point for legal aid was the mid-1900s when many nations formalized their systems. A comprehensive government-funded system was established in the UK in 1949 by the Legal Aid and Advice Act. Legal aid has been acknowledged as a fundamental human right by international declarations and treaties, including the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights. Legal assistance programs in the contemporary age differ from nation to nation but typically consist of a mix of public funds, nonprofits, and private attorneys working pro gratis. Legal assistance is always changing to accommodate the requirements of underprivileged groups, guaranteeing everyone has access to the courts and demonstrating the rising understanding of its significance in upholding a just and equitable society.

India started addressing the problem of access to justice more methodically after obtaining independence in 1947. The Indian Constitution's drafters incorporated measures to guarantee justice for all citizens and acknowledged the significance of legal aid. In order to guarantee that no citizen is denied the opportunity to obtain justice because of financial or other disadvantages, the state must provide free legal aid under Article 39A of the Indian Constitution, which was inserted by the 42nd Amendment in 1976.

Legal aid was first introduced in India during the colonial era, and it has seen substantial changes since the country's independence. The impoverished and marginalized in India had little access to the legal system during British rule. Nonetheless, there were early attempts at offering legal assistance. The appointment of attorneys to represent the poor in court was made possible by the Legal Practitioners Act of 1879. Legal aid was scarce and not generally accessible in spite of these regulations. Legal aid programs were developed by several Indian states in the 1950s and 1960s. These plans, however, lacked coherence and were dispersed. The establishment of the National Legal Services Authority (NALSA) by the Legal Services Authorities Act of 1987 marked a significant turning point. NALSA is in charge of setting up Lok Adalats, or people's tribunals, for the peaceful resolution of conflicts and giving free legal assistance to the less fortunate members of society. Soon after NALSA was established, local

legal aid programs were implemented by state and district legal services administrations, which ensured greater accessibility and reach.

India now has a comprehensive legal aid system with a number of initiatives and projects designed to give underprivileged and marginalized populations legal support. Law schools now have developed legal assistance clinics, and legal literacy initiatives are run to inform the public about their legal rights. The efficiency of legal assistance services in India has been significantly improved by the use of technology and alternative dispute resolution procedures like Lok Adalats. The development of legal aid in India is a reflection of a dedication to guaranteeing everyone has access to justice, grounded in both conventional wisdom and contemporary constitutional ideals.

In the case of M.H. Hoskot v. State of Maharashtra: The court ruled that access to legal aid was guaranteed under the Constitution. In cases where there is a possibility of life or personal liberty being taken away, the court determined that free legal services at the trial and appellate levels are an essential part of procedural fairness. As a result, in situations where a prisoner is unable to afford legal representation due to factors like poverty or being incommunicado, the court may, if the case's specifics, the severity of the sentence, and the interests of justice so dictate, assign qualified legal representation to the prisoner for the duration of their defense, provided that the opposing party does not object. The State is required to cover the cost of these services.¹

In Hussainara Khatoon v. Home Secretary, State of Bihar: The court ruled that access to legal aid was guaranteed under the Constitution. In cases where there is a possibility of life or personal liberty being taken away, the court determined that free legal services at the trial and appellate levels are an essential part of procedural fairness. As a result, in situations where a prisoner is unable to afford legal representation due to factors like poverty or being incommunicado, the court may, if the case's specifics, the severity of the sentence, and the interests of justice so dictate, assign qualified legal representation to the prisoner for the

¹ Sohail Nizam, 'Historical Development Of Legal Aid System in India: A Legal Perspective' SAGE JOURNALS <<https://journals-sagepub.com.proxy3.library.mcgill.ca/doi/epub/10.1177/22308075221119253>> accessed 14 June 2024

duration of their defense, provided that the opposing party does not object. The State is required to cover the cost of these services.²

LEGAL FRAMEWORK IN INDIA

To guarantee that all citizens have access to justice, India's legal aid system is set up to offer free legal services to those who are unable to afford them. This extensive framework includes several tiers of government as well as a range of initiatives aimed at assisting the underprivileged segments of the population. Article 39A of the Indian Constitution is the cornerstone of legal assistance in India. It requires the state to offer free legal aid to guarantee that no citizen is denied justice because of their financial situation or other impairments. The 42nd Amendment to the Constitution introduced this article in 1976.

The National Legal Services Authority (NALSA) was founded by the Legal Services Authorities Act of 1987 to supervise and carry out legal aid initiatives nationwide. The primary responsibilities of NALSA are to arrange Lok Adalats for conflict resolution, run legal awareness programs, and offer free legal assistance to qualified individuals. To guarantee that legal aid reaches the grassroots, district legal services authorities (DLSAs) function at the district level and each state has its own legal services authority (SLSA), which is governed by NALSA. In addition, taluk or sub-district-level operations are carried out by Taluk Legal Services Committees (TLSCs), expanding the availability of legal aid services to isolated and rural regions.

Individuals who fall below a certain income criterion are eligible for free legal aid. Eligibility for legal aid is based on financial criteria. Regardless of their financial status, members of specific groups are eligible, such as those who belong to the Scheduled Castes and Scheduled Tribes, are in detention, have been victims of ethnic conflict or mass catastrophes, are women and children, have intellectual disability, have been trafficked or are beggars. In addition to providing legal representation and advice, legal aid services also include legal awareness and literacy campaigns, the setting up of Lok Adalats—people's courts designed to mediate conflicts amicably outside of the official legal system—and legal representation.

Several law schools around the nation have set up legal aid clinics, which give law students hands-on training while delivering free legal services under the guidance of instructors and

² Ibid

active attorneys. Additionally, free legal services are offered to local communities through community legal aid clinics, which are established in both rural and urban regions. These clinics frequently work in conjunction with neighborhood NGOs and community organizations. Recent efforts have increased accessibility by using technology to deliver legal aid through helplines, smartphone apps, and internet platforms. The goal of legal literacy campaigns is to increase legal awareness, particularly in isolated and rural communities, so that people are aware of their rights and may take action to protect them.

India has a strong legal aid system in place to make sure that social or economic constraints never prevent someone from accessing the justice system. The framework aims to provide comprehensive legal help to the poor while respecting the justice and equality enshrined in the Indian Constitution. This is achieved through the coordinated efforts of NALSA, SLSAs, DLSAs, TLSCs, and several other initiatives.

Code of Civil Procedure, 1908: Certain policies that address the economic challenges faced by the average Indian citizen have been incorporated into the legal system. One of these safeguards for justice is the CPC's Order XXXIII. According to the definition, an "indigent person" is someone who is less wealthy, was previously classified as a "pauper," and has received assistance through the regulations established under the act. "The State shall provide free Legal Aid to indigent persons," according to Rule 18 of the Order.³

Code of Criminal Procedure, 1973: Section 304 of the Code of Criminal Procedure provides for free legal aid to indigents at state expenses in specific cases. With this constitutional and other legal frameworks, free legal aid has been provided at the instances of the government or at some time due to judicial pronouncement. This journey continued to take shelter from one or other legal frameworks till the introduction of precise law for providing free legal aid.⁴

JUDICIAL CONTRIBUTION IN THE DEVELOPMENT OF LEGAL AID IN INDIA

³ Ragini P. Khubalkar, 'Contours Of Legal Aid: Past, Present and Future' SAGE JOURNALS

< <https://journals-sagepub-com.proxy3.library.mcgill.ca/doi/full/10.1177/23220058241253394>> Accessed on 15 June 2024

⁴ Ibid

As stated earlier in the case of *Hussainara Khatoon v. Home Secretary, State of Bihar* the Court emphasized the significance of Article 39-A and highlighted free legal assistance as an essential aspect of the “reasonable, fair and just” process as implicit in Article 21.

In the case *Khatri v. State of Bihar*⁵, the Court addressed the entitlement to free legal assistance for those who are accused but are too poor or incompetent to pay lawyers. It said that the state must provide this assistance in accordance with the constitution from the time of their initial appearance before the magistrate until the end of the trial and all the way through the court proceedings. This right cannot be withheld on the grounds of insufficient funds, bureaucratic obstacles, or the accused's neglect to make a request. The accused must be made aware of these rights by magistrates and session judges. The guarantee of Article 21 implicitly includes the right to free legal assistance, which is essential to a fair and just procedure for the accused. The State is required under the Constitution to provide legal representation if the necessities of justice and the circumstances demand it.

In the case, *Suk Das v. Union Territory of Arunachal Pradesh*, Justice P.N. Bhagwati stressed the importance of creating legal awareness among the poor, who often lack knowledge of their rights, particularly the right to free legal aid. He noted that a significant portion of the Indian population, particularly those in rural areas, are illiterate and unaware of their legal rights. Even literate individuals are often uninformed about their rights and entitlements under the law. Due to this lack of legal awareness, they do not seek legal consultations and advice, hindering their self-reliance and ability to help themselves. Consequently, promoting legal literacy has been a fundamental aspect of the legal aid movement in India, as even the right to education cannot achieve its true objective without accessible education about legal entitlements. The constitutional promise of delivering justice to the people's doorstep would remain elusive without this awareness.⁶

CURRENT SCENARIO OF LEGAL AID IN INDIA

Lack of knowledge about the availability of such legal assistance is one of the factors contributing to a weak institutional framework. It often happens that the accused person is not

⁵ P.N. Bhagwati, ‘*Khatri and Others vs State Of Bihar and Ors*’ (Indian Kanoon, 9th December 1980) <<https://indiankanoon.org/doc/1122133>> accessed 15 June 2024

⁶ Sakshi Gopal Chaubey, ‘*Role Of Judiciary In The Development Of Legal Aid In India*’ IJCRT <<https://ijcrt.org/papers/IJCRT2310047.pdf>> accessed 15 June 2024

aware that they are entitled to legal assistance. The idea that a service of this nature should be provided for free is another major issue. There is a shortage of lawyers in the legal service authority, and even if any are appointed, they lack sufficient funds to offer meaningful assistance. Currently, India's legal aid movement is fragmented, sporadic, and lacks organization. There's not enough cooperation. The idea of equal access to the availability of the law has all but disappeared. The goals that have been set and the accomplishments that have been made differ significantly. For a variety of reasons, attorneys do not engage in pro gratis work. There is a lack of financial resources. Social education was not a part of legal education previously. Consequently, those in the profession seldom engage with members of the community in need of legal assistance, and they fail to understand or value their position.

For the five years between 2021 and 2026, the Ministry of Law and Justice unveiled a number of programs under the general heading, "Designing Innovative Solutions for Holistic Access to Justice." It began the Pro Bono Legal Services (Nyaya Bandhu 2017) and Tele Law and Legal Literacy programs by raising awareness and disseminating information about how to use technology to obtain justice in an easy-to-understand manner. The government is facilitating access to justice in this way as well. Part of the law school's pro bono program is funded and regulated by the government.

Professor Madhav Menon established the first legal assistance clinic at Delhi University in 1968 to introduce students to the realities of the legal system. Banaras Hindu University introduced a legal education course in 1970 that required students to complete an internship in courts and law offices. A former judge was also assigned to oversee the legal aid clinic's operations. In order to educate the public about various social welfare laws and provide assistance in resolving accident and divorce cases, the University of Jodhpur established a legal aid clinic in 1983–1984. Since then, a number of law schools have established legal aid clinics and begun operating on a shoestring with few resources and faculty.

CONCLUSION

In India, legal assistance is a vital tool for guaranteeing that everyone has access to the legal system, especially the underprivileged and marginalized groups in the community. Legal aid is a manifestation of the values of justice and equality and is rooted in the Indian Constitution, namely in Article 39A. It is further upheld by the Preamble and other Fundamental Rights. A comprehensive and organized framework for providing legal services, implementing legal

literacy programs, and setting up alternative dispute resolution mechanisms such as Lok Adalats has been established with the establishment of the National Legal Services Authority (NALSA) and its network of state and district authorities. Legal aid is now required by law and is a fundamental component of the right to a fair trial, according to judicial interpretations.

The legal aid system in India is still developing, making use of technology and community-based projects to broaden its scope in spite of obstacles including limited funding and maintaining public awareness. In the end, legal aid in India is an attempt to close the gap between the legal system and those who are most in need of its protection and services, symbolizing a dedication to the constitutional promise of justice for all.

