

# ACCESS TO JUSTICE

## THROUGH FREE LEGAL AID



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National Law University and  
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2025



# **Access to Justice through Free Legal Aid**

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## **Foreword**

### ***A society that denies justice to the poor, marginalised and the vulnerable denies justice to itself***

I am happy to know that National Law University and Judicial Academy, Assam, Guwahati has taken the initiative to publish a book on the subject: *Access to Justice Through Free Legal Aid*.

It is indeed a laudable objective.

When we talk about access to justice and legal aid, we must keep in mind the mandate of Article 21 of the Constitution of India. A colourless article, it says that no person shall be deprived of his life and personal liberty except according to procedure established by law. It was in *Maneka Gandhi Vs. Union of India*<sup>1</sup> that Supreme Court declared in no uncertain terms that both the law and the procedure must be fair, not formal. Those must conform to the requirements of fairness, non-arbitrariness and by extension with the principles of natural justice. *Maneka Gandhi* can be said to be a watershed moment in the annals of Indian constitutional history. Post *Maneka Gandhi*, the expressions life, personal liberty and procedure

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<sup>1</sup> AIR 1978 SC 597

established by law finding place in Article 21 have been given a completely new orientation by way of expansive judicial interpretation.

We also need to remind ourselves about Article 39A which was inserted in the Constitution of India by way of an amendment in 1976. This directive principle speaks about equal justice and free legal aid. It says that the legal system must promote justice on the basis of equal opportunity and provide for free legal aid so that justice is not denied to any citizen because of economic or other disabilities.

By interpreting Article 21 in the light of Article 39A, Supreme Court in *Madhav Hayawadanrao Hoskot Vs. State of Maharashtra*<sup>2</sup>, has held that right to free legal aid is a guaranteed fundamental right under Article 21.

Then in *Suk Das Vs. Union Territory of Arunachal Pradesh*<sup>3</sup>, Supreme Court has held that a trial without offering legal aid to an indigent accused at the expense of the State will be vitiated and conviction will be set aside.

Right to fair trial and right to speedy trial are now recognised fundamental rights as implicit under

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<sup>2</sup> AIR 1978 SC 1548

<sup>3</sup> AIR 1986 SC 991

Article 21. There can be no fair trial without legal representation and, therefore, legal aid.

Parliament enacted the Legal Services Authorities Act, 1987 providing a statutory framework for legal aid. Under this Act, legal - services authorities have been established at the national, state and taluka level to ensure that free and competent legal services are extended to the weaker, marginalised and vulnerable sections of the society.

The concept of legal aid has continued to be expanded by the Supreme Court in *Rajoo alias Ramakant Vs. State of MP*.<sup>4</sup> Supreme Court has declared that legal aid has to be provided at all stages and not merely at the trial stage.

In *Mohammed Ajmal Mohammad Amir Kasab Vs. State of Maharashtra*<sup>5</sup>, Supreme Court has held that it is the duty of the Magistrate to make the accused aware of his right to be defended by a legal practitioner of his choice and if he has no means to engage a lawyer of his choice, the State has to provide one.

Access to justice and legal aid are now firmly entrenched in our constitutional jurisprudence as well as in the criminal justice system.

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<sup>4</sup> (2012) 8 SCC 553

<sup>5</sup> AIR 2012 SC 3565

I am sure, the book *Access to Justice Through Free Legal Aid* will benefit the readers about the various facets of the two concepts which are so intrinsically linked to a humane criminal justice system within the broad framework of the rule of law.

I am confident the book will be received well by the academia as well as by all the stakeholders.

My best wishes to the editors and the authors.



**(JUSTICE UJJAL BHUYAN)**

**April 11, 2025;  
New Delhi.**



## **Preface**

The pursuit of justice, particularly for marginalized and vulnerable sections of society, lies at the heart of any democratic system. It is a principle that demands the unwavering commitment of institutions and individuals alike. This book, *Access to Justice through Free Legal Aid*, endeavours to explore the multifaceted dimensions of free legal aid as an indispensable mechanism for upholding the rule of law and ensuring that justice is not a privilege but a right accessible to all.

The inspiration behind this volume stems from the belief that justice cannot exist in a vacuum. It requires equitable access, especially for those burdened by economic, social, or systemic disadvantages. This compilation brings together diverse perspectives from scholars, legal practitioners, and academicians who have delved into the intricacies of legal aid frameworks, their implementation, and the challenges encountered in ensuring fairness and equality in legal services.

The chapters in this book address pivotal issues ranging from judicial interventions to the socio-legal contexts of legal aid, and from the barriers posed by illiteracy and lack of awareness to the evolving roles of institutions in delivering pro bono services. Each contribution underscores the significance of aligning legal aid initiatives with constitutional mandates, international frameworks, and grassroots realities.

This work also highlights the collective effort of the contributors, editors, and the institution that facilitated this endeavour. The collaborative effort reflects a shared vision of making legal aid a functional reality for the underprivileged, ensuring that the promise of justice is not hindered by barriers of any kind.

As editors, we hope this volume serves as a resource and a catalyst for meaningful discussions and actionable solutions. We invite readers to reflect, critique, and engage with the ideas presented within these pages. Together, we can move closer to a system of justice that truly serves all.

*Editors*

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2024.

## **Acknowledgment**

Any writing project reflects the contribution of several people in multiple ways. A book is an output of not just the painstaking work of the writers and editors but also of those who inspired, supported and motivated in accomplishing this task. Every such contribution deserves due recognition and expression of gratitude. Therefore, at the outset we are thankful to Prof. K. V. S. Sarma (Vice Chancellor, NLUJAA), Prof V. K. Ahuja (former Vice-Chancellor, NLUJAA), Mr. Gunajit Roy Choudhury (Registrar, NLUJAA and former Convenor, CCLELAC), Dr. Nandarani Choudhury (Assistant Registrar, Academic, NLUJAA) and Dr. Shailendra Kumar (Assistant Professor of Law, NLUJAA). Their constant encouragement and support were crucial to the completion of the book. We are grateful to their cooperation in the timely publication of the book.

We express our deep sense of gratitude and thanks to all the contributors from various institutions for writing chapters on important issues relating to legal aid and access to justice. Their timely submissions were vital for the completion of the book. We are thankful to all of them for covering a wide range of topics on the theme of the book. Their contributions have enriched the quality and impact of the book. We are also thankful to our colleagues for their help and guidance. We are especially thankful to Mr. Satyajit Deb, System Operator, for his contribution in the preparation of the final manuscript.

**Editors**

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## Chapter - 1

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# **Judicial Route Towards Safeguarding the Constitutional Right to Pro-Bono Legal Service**

*Ms. Nami Saikia\**

*Ms. Himashree Konwar\*\**

### **Abstract**

To ensure that the law and justice are fair for everyone, the rich and the poor must be treated equally. However, it is equally important that economically disadvantaged individuals have access to the court system and can assert their rights effectively. This will ensure not only equal treatment under the law but also equal outcomes and impartial administration of justice. Legal aid is a pro bono legal service to the impoverished and disadvantaged who are unable to pay for legal representation in court. Legal assistance for economically disadvantaged people is essential to maintain the rule of law in a civilized society. Justice shall be secured to everyone and it should not be refused or rejected based on

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their financial situation. The Constitution of India aims to establish a welfare state by providing equal justice even to the poorest ones of society. The judiciary, which is both independent and fair, is the guardian of the rights secured under the Constitution of India. The court has actively prioritized the protection of the right to free legal assistance since independence. The notable role of the judiciary in ensuring equal justice to every human being is an important pillar of a successful democracy. This paper seeks to examine the vital role played by the judiciary in upholding the Constitutional right to pro bono legal service. It also highlights the importance of assuring that all citizens have access to justice and how this commitment promotes fairness and equality within the legal system.

**Keywords:** Legal aid, economic disability, judiciary, interpretation, justice.

## I. INTRODUCTION

*“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”*

*-Hugo Black*

Legal aid works for the development of the economically weaker section of society by providing free legal assistance. It is a mechanism that ensures the right to justice for every individual. In the

Constitution of India, initially, no such right was incorporated. But after some time as a result of the initiatives taken by the legislature and judiciary, free legal aid emerged as a mere constitutional right. The constitution mandates the state to endow free legal aid to the economically disadvantaged segment of the society. There has also been a substantial contribution made by the judiciary to the establishment of the right to get free legal assistance. The judiciary used its power of interpretation in several cases and has given its remarkable judgment on providing legal aid. The Judicial system determines the direction that the legislation should take in order to ensure that individuals who need justice are provided with it. As a result, the government has taken the initiative to promote legal aid and to secure equal opportunity for every individual. In recent years, the Pro Bono Legal Service Program has introduced Nyaya Bandhu, a digital platform where legal experts provide voluntary advice to those unable to afford it.

## **II. Understanding the Notion of Legal Aid**

The primary objective of legal aid is to promote distributive justice by ensuring fair access to legal services. It also aims to effectively administer welfare benefits, eradicate illiteracy, and address social and structural discrimination. The provision of legal aid is inextricably related to poverty within the context of

socio-economic conditions, overshadowed by the barriers of illiteracy and lack of awareness.

Justice P.N. Bhagwati explained the concept of legal aid in his words as follows:

“Legal aid means providing an arrangement in 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 its given to them by law, the poor and 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. Legal aid should be available to the poor and illiterate, who don't have access to courts. One need not be a litigant to seek aid using legal aid”.<sup>1</sup>

### **III. THE ROLE OF THE JUDICIARY IN THE ADVANCEMENT OF LEGAL AID IN INDIA**

The Constitution of India aims to build an independent and unbiased judiciary to safeguard the rights of the citizen. With the highest jurisdiction in the administration of justice delivery, the Supreme Court of India has been strongly protecting both the rights of people and the administration of justice. In compliance with Article 147 of the Constitution of India, the Supreme Court has been given the

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<sup>1</sup> Gujarat Legal Aid Committee, Report on Inequality in the Administration of Justice (1971).



authority to interpret the Constitution. By exercising the power of interpretation, the Apex Court is ensuring people's rights and protecting the inherent ideas of the Constitution of India. In addition to its power of interpretation, by the provisions of the Constitution of India, the Supreme Court, in conjunction with the High Court, has the authority to conduct judicial reviews to protect the fundamental rights of people. The Part III of the Constitution of India contains the Fundamental Rights of the citizens of India. It is also known as the Bill of Rights of the Constitution of India. It guarantees most of the human rights delineated in the Universal Declaration of Human Rights, 1948. Additionally, the Constitution itself includes provisions that are designed to safeguard these fundamental rights. To ensure that the rights granted by Part III are enforced, it is assured that the right to petition to the Supreme Court through the necessary procedures remains intact.<sup>2</sup>

According to Article 32 of the Constitution of India, the Supreme Court is vested with the authority to issue directions, orders, or writs, which may include writs such as Habeas Corpus, Mandamus, Prohibition, Quo warranto, and Certiorari, depending on the circumstances. This power is bestowed so that

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<sup>2</sup> INDIA CONST. art. 32 § 1.

the rights guaranteed by Part III of the Indian Constitution may be enforced.<sup>3</sup>

According to Article 226 of the Constitution, every High Court is vested with the authority, throughout the territories in regard to which it exercises jurisdictions, to issue writs or directions to any person or authority, whether it be a government, within those territories, in order to carry out the administration of any of the rights that are granted by Part III, or for any other sort of function that may arise.<sup>4</sup>

The Constitution of India, which is in accordance with all of the provisions that have been mentioned above, ensures that fundamental rights are safeguarded and protected. Both the Supreme Court and the High Court function as the protectors of the basic rights of the citizen community to guarantee that justice is carried out. Although the Constitution secures the rights of the citizens but in reality, because of reasons like poverty, and economic disability, the majority of the people are unable to get justice. There is a persistent denial of the right to justice for the economically disadvantaged segment of society. Article 39A was added to Part IV of the Constitution by the Constitution (42nd Amendment) Act of 1976 to facilitate the provision of justice for the

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<sup>3</sup> INDIA CONST. art. 32 § 2.

<sup>4</sup> INDIA CONST. art. 226, cl. 1.

economically disadvantaged and socially marginalized members of society. It is a directive that is implemented at the state level to guarantee that the basic right to get legal justice is properly safeguarded... It says-

*“Equal justice and free legal aid- the state shall secure 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 schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.”<sup>5</sup>*

During the historic decision of *Chairman, Railway Board v. Chandrima Das*,<sup>6</sup> the Supreme Court of India ruled that Part III of the Constitution of India ensures that all of the fundamental rights that are described in the Universal Declaration of Human Rights, 1948 are protected, not only for the citizens of India but also for foreign individuals. The objective of this part is to safeguard fundamental human rights from interference from political parties and to make them inaccessible to political parties so that the people of the nation may benefit from them.

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<sup>5</sup> INDIA CONST. art. 39, cl. A.

<sup>6</sup> *Chairman, Railway Board v. Chandrima Das*, AIR 2000 SC 988 (India).

## 2.1 Judiciary and Right to Free Legal Aid

The states are obligated to give free legal assistance to those who are economically disadvantaged. In accordance with the Constitution of India, it is a directive principle which shall be accomplished by the state. However, the Supreme Court has consistently upheld the right to receive free legal assistance for those from economically disadvantaged backgrounds by using a broad and inclusive approach. The Supreme Court in the case of *Maneka Gandhi v. Union of India*<sup>7</sup> held that the phrase 'procedure established by law' given under Article 21 means a just, fair, and reasonable procedure. It prohibits any arbitrary process that infringes the fundamental rights of an individual.

Article 21 of the Constitution is interpreted more comprehensively by the Supreme Court, which helps to ensure that citizens' rights are protected. In addition, it emphasized the importance of the right of poor persons to receive free legal assistance as a vital prerequisite to get justice that is just, fair, and reasonable.

In *Hussainara Khatoon and Others v. Home Secretary Bihar*,<sup>8</sup> according to Article 21 of the Constitution of India, the Supreme Court of India has decided that

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<sup>7</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (India).

<sup>8</sup> *Hussainara Khatoon & Ors. v. Home Sec'y, State of Bihar*, AIR 1979 SC 1360 (India).

the provision of free legal services is an important component of conducting a process that is just, fair, and reasonable. Furthermore, the court determined that individuals who are accused of a crime and are unable to afford legal representation due to factors such as poverty, or being unable to communicate, have the inherent entitlement to be provided with a lawyer by the government if the situation of the case and the demands of justice require it.<sup>9</sup>

Again, in the case of *Khatri v. State of Bihar*,<sup>10</sup> there is a constitutional obligation for the state to provide free legal aid to those who are impoverished, and the Supreme Court has ruled that the state cannot refuse to do so for grounds related to finances or administration. The courts have the responsibility to provide the information to the needy person of their rights.

## **2.2 Judiciary: In Interpreting the Provisions of Legal Aid under the Constitution of India**

In the beginning stages of the Constitution's implementation, the judicial system did not provide a particularly wide and liberal interpretation of the provisions of the Constitution and statutes that provide legal aid advantages in the same manner that

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<sup>9</sup> Project 39A, Legal Aid Landmark Judgments, <https://www.project39a.com/legal-aid-landmark-judgments> (last visited Dec. 8, 2023).

<sup>10</sup> *Khatri v. State of Bihar*, AIR 1981 SC 262 (India).

it does in the present day. Because of this, victims were forced to contend with challenges while attempting to prove their innocence, and more often than not, they were unsuccessful in their fight for justice. According to the law, one must represent themselves through a lawyer.<sup>11</sup>

Even the judiciary gave a very restrictive interpretation in *Janardan Reddy and Others v. State of Hyderabad*<sup>12</sup> and *Tara Singh v. State of Punjab*<sup>13</sup> regarding the rights of the accused to engage a lawyer. The court said, "...it is his duty to ask for a lawyer if he wants to engage one or get his relations to engage one for him. The only duty cast on the Magistrate is to afford him the necessary opportunity."

The case of *Kesavananda Bharati v. State of Kerala*<sup>14</sup> is considered one of the most important cases of constitutional law in India. In this case, it was stated by the Supreme Court that the Directive Principles and Fundamental Rights are both aimed at accomplishing the same objective, which is to bring about the social revolution and construct a welfare

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<sup>11</sup> Criminal Procedure Code, 1973, § 304, No. 2, Acts of Parliament, 1974 (India).

<sup>12</sup> *Janardan Reddy & Ors. v. State of Hyderabad*, AIR 1951 SC 217 (India).

<sup>13</sup> *Tara Singh v. State of Punjab*, AIR 1951 SC 411, SCR 729 (India).

<sup>14</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (India).

state and that they are capable of being interpreted and implemented collaboratively. They are supplementary and complementary to each other.<sup>15</sup>

After this landmark judgement the Constitution (42<sup>nd</sup> Amendment) Act, 1976 came and it changed the scene completely. It added a new Article 39-A to Part IV of the constitution for the benefit of the poor section of the society by providing free legal assistance. Owing to this fact, it is possible to assert that the incorporation of Article 39-A into the Constitution of India has brought about a transformative shift in the realm of Legal Aid in India.<sup>16</sup>

The Supreme Court explained the objective of Article 39-A as under:

*“... it is clear from the terms of Article 39-A, the objective of the Constitution of India is to ensure social and equal justice so that legal aid has to be implemented by comprehensive schemes. Directive Principles and Fundamental Rights have no disharmony as both are aiming at the same goal of bringing about a social revolution and the*

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<sup>15</sup> J.N. Pandey, *Constitutional Law of India* (Central Law Agency 2014).

<sup>16</sup> Kalpana v. Jawale, Changing Dimension of Right to Legal Aid as a Fundamental Right Under Indian Constitution: A Judicial Approach, 2 OIIIRJ 28, 28-29 (2012).

*establishment of a welfare state, which is envisaged in the Preamble. Primarily Article 39-A is addressed to the Legislature and Executive, but as far as the court of justice can indulge in judicial law-making, within the ambit of the Constitution, the courts too are bound by this mandate.”<sup>17</sup>*

In *Sheela Barse v. State of Maharashtra*,<sup>18</sup> as provided by Articles 14, 19, 21, and 39-A of the Constitution, the Supreme Court determined in *Sheela Barse v. State of Maharashtra*, the Supreme Court, interpreting Articles 14, 19, 21, and 39-A, determined that individuals who are impoverished and who are incarcerated shall be provided with legal counsel. Providing legal aid is a sine quo non for administering justice and in the absence of it, injustice is likely to result.

As a result of the historic ruling that was discussed before, it is important to point out that the court in India played a vital part in ensuring that individuals have the right to get free legal assistance. In the course of its efforts to create and implement this, the Supreme Court has, via its numerous rulings, addressed a wide range of issues or components of the Right to Legal Aid.<sup>19</sup>

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<sup>17</sup> *Ranjan Dwivedi v. Union of India*, AIR 1983 SCR (2) 982, SCC (3) 307 (India).

<sup>18</sup> *Sheela Barse v. State of Maharashtra*, (1983) 2 SCC 96 (India).

<sup>19</sup> *Supra* note 8.



Further, in *Gopalanachari v. State of Kerala*,<sup>20</sup> the Supreme Court showed its concern in preserving and promoting the right to legal aid. With regard to this case, Justice V.R. Krishna Iyer said:

“...The poor are picked up or brought up, habitual witnesses swear away their freedom and courts ritualistically commit them to prison Article 21 is for them a freedom under total eclipse in practice. Courts are guardians of human rights. The common man looks upon the trial court as a protector. The poor and the illiterate, who have hardly the capability to defend themselves, are nevertheless not ‘nonpersons’ the trial judges must remember...we direct the trial magistrates to discharge their duties, when trying cases under Section 110, with great responsibility and whenever the counter-petitioner is a prisoner gives him the facility of being defended by counsel now that Article 39-A has reinforced Article 21.”<sup>21</sup>

In *Md. Sukur Ali v. State of Assam*<sup>22</sup>, considering that it would be unfair for the accused to be forced to endure the consequences of their counsel's failure, the court decided that it should abstain from adjudicating a criminal case against the accused in the absence of legal representation. In such

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<sup>20</sup> *Gopalanachari v. State of Kerala*, AIR 1981 SC 674 (India).

<sup>21</sup> *Gopalanachari v. State of Kerala*, AIR 1981 SC 677 (India).

<sup>22</sup> *Md. Sukur Ali v. State of Assam*, AIR 2011 SC 1222 (India).

circumstances, the court should appoint an *amicus curiae* to advocate on behalf of the accused.

In a recent judgment, *Anokhi Lal v. State of Madhya Pradesh*,<sup>23</sup> the Supreme Court held that sufficient time shall be given to the *amicus curiae* to prepare, otherwise it will be considered as a denial of the right to legal aid.

#### **IV. LEGAL AID AND ITS STATUTORY RECOGNITION**

In addition to the constitutional provisions, legal aid has been recognized in both civil and criminal procedural laws. Some provisions of these procedural laws talk about providing legal assistance to the poor people of society. Order XXXIII of the Civil Procedure Code, 1908 deals with providing legal assistance to the indigent person. Rule 9-A of this Order specifically speaks about providing a pleader to an unrepresented indigent person by the court. Similarly, section 304 of the Criminal Procedure Code, 1973 deals with providing legal aid to an accused person. These provisions secure the right to get equal justice irrespective of the economic status of a person.

Despite having these provisions under the procedural laws somehow the service of legal aid was lacking.

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<sup>23</sup> *Anokhilal v. State of Madhya Pradesh*, AIR 2020 SC 232 (India).

The impact of these laws was not very significant. As an initiative taken by the judiciary and the legislature to ensure the right to legal aid more effectively, the Parliament passed the Legal Service Authorities Act, of 1987. This Act mainly deals with the mechanisms of providing free legal aid. It prescribes the criteria for facilitating free legal aid services. Under this legislation, National Legal Service Authority and State Legal Service Authorities have been established to promote legal aid service at national and state level respectively. District Legal Service Authorities have also been set up to work for the grassroots level of society. Another important mechanism under this Act is Lok Adalat. It is a dispute redressal mechanism that works to provide free legal services for amicable settlement of cases.

## **V. CONCLUSION**

The concept of pro bono legal service in India is a significant component of ensuring access to justice for all citizens, regardless of their financial means. The judicial hawk plays a vital role in safeguarding the Constitutional right to pro bono legal service, ensuring that those in need can receive the legal assistance they require. By upholding this right, the judiciary in India can promote fairness and equality within the legal system, ultimately contributing to a more just society. This commitment to pro bono legal service must continue to be upheld and supported by

all members of the legal community, to ensure that justice is truly accessible to all.

The bedrock of our legal system depends on the basic principle of natural justice as its foundation, which provides that no one should be subjected to punishment without giving an opportunity to present their case. The essential prerequisite of due process can only be fulfilled if the individual seeking justice has adequately stated their case. Our criminal jurisprudence adheres to a compelling anecdote: it is preferable to allow ten guilty to escape punishment than to wrongfully convict an innocent.

The Supreme Court has consistently made several efforts to adopt this principle that has been present in our legal system from its inception. Despite significant efforts made to address the fundamental need for a fair society, there remains a considerable amount of work to be done to transform the concept of free legal assistance from a mere theoretical commitment into a tangible reality for the majority of the people. The fundamental need in this regard is the establishment of legal consciousness among individuals from diverse backgrounds. The legal terminology must be made comprehensible to the general public. An essential need now is a lawyer who is committed to the welfare of the public, to further the very commendable objective of ensuring justice for individuals from all sectors of society.

## Chapter - 2

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# ACCESS TO JUSTICE FOR SURVIVORS OF DOMESTIC VIOLENCE IN INDIA

By Harshita Singhal\*  
Pratiksha Pawar\*\*

*“The State shall endeavour to ensure that marriage shall be based only on the mutual consent of both sexes and shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. The State shall also recognize that motherhood has a special claim upon its care and protection.”*

### Abstract

The Indian Constitution, founded on principles of liberty, equality, and human dignity, enshrines access to justice as a fundamental right, including free legal assistance, particularly for women, under

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Article 39A and the Legal Services Authorities Act of 1987. This article examines the availability and accessibility of free legal aid for survivors of domestic violence in India against the backdrop of a concerning 32% spousal violence rate reported in the National Family Health Survey-5. It identifies barriers like lack of awareness and systemic issues hindering timely and adequate legal aid delivery to women, especially survivors of domestic violence.

Furthermore, the article analyses existing legislation safeguarding married women's rights in India, focusing on dowry prohibition laws, Section 498A of the Indian Penal Code, and the Protection of Women from Domestic Violence Act (PWDVA). It reveals challenges such as burdens of proof, potential misuse, and gender bias. Proposed reforms include clarifying evidence standards, expanding protections, and implementing stringent penalties for false complaints. While the PWDVA marks a significant step, criticisms include difficulties in proving actual income for maintenance, delays in justice delivery, and gender bias.

In conclusion, the article underscores the need for reforms in the legal aid system to enhance overall access to justice. It highlights gender biases in legislation and implementation, advocating for a comprehensive re-evaluation. Recognizing the dynamic nature of domestic violence calls for responsive approaches addressing legal gaps,

societal attitudes, and law enforcement challenges to effectively combat violence within marriages.

Keywords: Indian Penal Code, Domestic Violence Act, legal aid

## **I. INTRODUCTION**

In 2020, the UN Secretary-General raised the issue of and expressed concern over the “Shadow pandemic” (an alarming surge in violence against women as a result of the pandemic and the subsequent lockdown measures).<sup>1</sup> This global concern is not distant from the home [India], as revealed by the National Family Health Survey-5 (NFHS-5), indicating that a staggering 32% of married women aged 18 to 49 in India grapple with various forms of spousal violence, including physical, sexual, or emotional abuse.<sup>2</sup> These alarming statistics underscore an urgent need for a critical examination of the access to justice to survivors of domestic violence in India, particularly concerning matrimonial offences.

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<sup>1</sup> *Shadow Pandemic of Domestic Violence*, HARVARD GAZETTE, <https://news.harvard.edu/gazette/story/2022/06/shadow-pandemic-of-domestic-violence/> (last visited Nov. 28, 2023).

<sup>2</sup> Women’s Web, NFHS-5 Domestic Violence: Latest Figures Show Not Much Has Changed, <https://www.womensweb.in/2022/05/nfhs-5-domestic-violence-latest-figures-show-not-much-has-changed-may22wk4sr/> (last visited Nov. 28, 2023).

The evolution of law around rights of married women reveals a complex journey starting with the enactment of the Dowry Prohibition Act, 1961 and culminating in the more recent Domestic Violence Act, 2005.<sup>3</sup> Despite these legislative milestones, instances of domestic violence persist – the latest report by the National Crime Records Bureau shows an increase of 4% over 2021 in cases of crime against women<sup>4</sup> of which the majority of cases of crime against women continued to be registered under ‘Cruelty by Husband or His Relatives.’<sup>5</sup> This article embarks on a thoughtful exploration of the availability of the legal aid services for women survivors of domestic violence, the mechanism available to access the said legal aid service, quality of the services and the existing legal frameworks securing rights of married women to shed light on the persistent gaps and shortcomings in addressing matrimonial offences in India.

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<sup>3</sup> An Act to provide for more effective protection of the rights of women, guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

<sup>4</sup> A total of 4,45,256 cases of crime against women were registered during 2022 showing an increase of 4% over 2021 where 4,28,278 cases were registered, National Crime Records Bureau, *Crime in India – 2022 Statistics*, <https://ncrb.gov.in/crime-in-india-year-wise.html?year=2022&keyword=> (last visited Dec. 8, 2023).

<sup>5</sup> 31.4% of the total cases of crime against women, National Crime Records Bureau, *Crime in India – 2022 Statistics*, <https://ncrb.gov.in/crime-in-india-year-wise.html?year=2022&keyword=> (last visited Dec. 8, 2023).



Lack of awareness about the existing rights continues to persist. Absence of legal awareness leads to exploitation and deprivation of rights and benefits. Further, exercising each of the rights requires women to interact with different authorities in the criminal justice system. There is a need for dependency on lawyers to exercise the rights through courts. Therefore, it becomes essential to see what is the quality of free legal aid services being provided by legal aid lawyers to survivors of domestic violence in India.

Alongside, there is an underscoring the necessity for a more profound and critical analysis of the legislative measures designed to address matrimonial offences. This examination becomes imperative to identify and bridge the persistent gaps within the existing legal apparatus, ensuring a more effective and responsive approach to combat domestic violence.

The article is divided into three parts of which Part A deals with the historical evolution of legal aid in India and women's issues with the Legal Services Authorities Act, 1987<sup>6</sup> ("LSA Act"). Part B traces the history of rights of married women and delves deeper into critically analysing existing domestic violence legislations in India and Part C concludes the paper by suggesting ways to reform the existing legal aid

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<sup>6</sup> Legal Services Authorities Act, 1987, No. 39 of 1987.

services and laws around rights of married women to promote access to justice for survivors of domestic violence.

## **PART - A**

### **II. HISTORICAL EVOLUTION OF LEGAL AID IN INDIA**

Legal aid entails providing no-cost legal services to individuals who are economically disadvantaged and unable to afford legal representation for their legal matters in courts, tribunals, or before authorities. The roots of organised efforts by the State to offer legal assistance to the impoverished and needy can be traced back to 1944, when Lord Chancellor Viscount Simon established the Rushcliffe Committee to investigate the availability of legal advice for the poor in England and Wales, and to propose recommendations for ensuring state-provided legal guidance to those in need. Lord Denning, in reflecting on legal aid, described it as a government-funded system catering to individuals unable to bear the costs of legal advice, assistance, and representation. He emphasised its significance, noting the shift from individuals bearing legal expenses to state funding, marking a significant evolution in legal practice.

After independence, the Constitution of India, adopted in 1950, laid down the foundation for a democratic and egalitarian society. The principles of

equality before the law and equal protection of laws<sup>7</sup> formed the basis for the development of legal aid in India. Part IV of the Constitution of India enlists the Directive Principles of State Policy. These are principles which even though not enforceable by any court but are nevertheless fundamental in the governance of the country.<sup>8</sup> The State is duty bound to apply these principles in making laws.<sup>9</sup> Of the various directive principles, Article 38(1) casts a duty upon the State to “*strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life.*” As an endeavour to fulfil this duty, the Parliament by way of the 42<sup>nd</sup> Amendment in 1976 introduced Article 39A whereby the State was obligated to “*secure that the operation of the legal system promotes justice, on a basis of equal opportunity*” and “*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*”

To safeguard ideals of liberty, equality, and upholding human dignity guaranteed under the Constitution of India, the Parliament enacted the LSA Act. The LSA Act was formed with the objective to “*constitute legal*

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<sup>7</sup> INDIA CONST. art. 14.

<sup>8</sup> INDIA CONST. art. 37.

<sup>9</sup> *Id.*

*services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities...*" The Act mandated constitution of National Legal Services Authority by the Central Government,<sup>10</sup> State Legal Services Authority by every State Government<sup>11</sup> to exercise the powers and perform the functions conferred upon under the LSA Act. In addition, the State Government is mandated to constitute a District Legal Services Authority for every District in the State.<sup>12</sup> LSA Act lays down various criteria for giving legal services<sup>13</sup> of which a woman is also entitled to legal services under it to file or defend a case.

The LSA Act led to the establishment of the National Legal Services Authority (NALSA) in 1995. NALSA serves as the apex body for coordinating and monitoring legal aid activities across the country. Alongside NALSA, State Legal Services Authorities (SLSAs) were set up in every state to implement legal aid programs at the grassroots level. These

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<sup>10</sup> Legal Services Authorities Act, 1987, No. 39 of 1987, § 3, India Code (1987).

<sup>11</sup> Legal Services Authorities Act, 1987, No. 39 of 1987, § 6, India Code (1987).

<sup>12</sup> Legal Services Authorities Act, 1987, No. 39 of 1987, § 9, India Code (1987).

<sup>13</sup> Legal Services Authorities Act, 1987, No. 39 of 1987, § 12, India Code (1987).

authorities work in coordination with district legal services authorities (DLSAs) and other stakeholders to ensure effective delivery of legal aid services.

However, despite the above advancements, instances of domestic violence persist. Cases of domestic violence remain pending for years. NALSA has submitted a state-wise data to the Supreme Court of India regarding pendency of disposal of cases under the Protection of Women from Domestic Violence Act (“PWDVA”) in 2005 as of July 2022. It shows that a total of 4,71,684 original cases and a total of 21,088 appeals is pending before courts under the PWDA in India. This is out of the approximately twelve lakh cases of domestic violence that have been registered across the country since the inception of the Act in 2005. We cannot discount the fact that in contemporary times, navigating the complexities of courts, legislative frameworks, and precedents poses challenges not only for the economically disadvantaged but also for individuals lacking legal knowledge. Therefore, providing legal aid, particularly to women, presents a formidable legal challenge. Despite progress towards gender equality, barriers persist in accessing and securing legal rights, implementing women’s rights.

In this article we scrutinise the legislative landscape and practical availability of legal aid for survivors of domestic violence to contribute to a nuanced understanding of where the current system falls

short. By highlighting these gaps, we pave the way for constructive conversations on fortifying the legal apparatus to provide effective legal services for survivors of domestic violence in India and guarantee access to justice.

### **III. WOMEN'S ISSUES AND THE LSA ACT**

The LSA Act stands as a pivotal legislative measure aimed at ensuring legal aid and assistance to the marginalised sections of society, including women. However, a critical examination reveals the complex interplay between the provisions of the LSA Act and the lived experiences of women, particularly those who are survivors of domestic violence.

The LSA Act, while embodying noble intentions, encounters various challenges when it comes to effectively addressing the legal needs of women, especially in the context of domestic violence. Despite the existence of legal frameworks, the implementation often falls short, leaving women vulnerable to systemic injustices and barriers to justice.

One significant aspect is the interpretation and application of legal provisions within the LSA Act concerning women's rights, including those pertaining to domestic violence. Despite legal safeguards, survivors often face hurdles in accessing justice due to various factors such as social stigma, economic constraints, and lack of awareness about

their rights and available legal remedies. Moreover, the effectiveness of the LSA Act in providing timely and adequate legal aid to women, particularly survivors of domestic violence, is hindered by systemic issues within the legal and judicial systems. These issues may include bureaucratic delays, insufficient resources allocated to legal aid services, and a lack of sensitivity to the unique needs and vulnerabilities of women. Furthermore, the intersectionality of gender with other social identities, such as caste, class, and ethnicity, further complicates the experiences of women seeking justice under the LSA Act. Women from marginalised communities often encounter compounded forms of discrimination and are disproportionately affected by barriers to accessing legal aid and justice.

Shedding light on the fact that the overwhelming majority of the general public is not utilising the free legal aid services due to many reasons including the lack of awareness and poor quality of the aid offered, Justice Uday U. Lalit, Supreme Court Judge and the Executive Chairman of National Legal Services Authority, said that the good quality legal aid must be ensured to make people have faith in the legal aid system. He remarked during a lecture in Karnataka *“Legal aid to the poor does not mean poor legal aid. There has to be better standard, better quality and better level,”* of legal aid. Legal Aid Counsels (LACs) primarily offer their legal expertise to individuals in subordinate courts, aiming to serve the

underprivileged. However, the challenges within the legal aid system can overshadow this altruistic motive. Issues such as low honorarium and the process of empanelment often push LACs to prioritise private cases over legal aid ones. Consequently, it's crucial to shed light on the conditions under which LACs operate in subordinate courts in India.

The present payment system to LACs is more an impediment to the efficient delivery of services rather than a facilitator. The usual practice of paying panel lawyers their fees in two instalments: one at the outset of the case and the next at the conclusion of the case. Cases often take years to reach completion, and therefore, the present practice of maintaining bills from the inception of the LACs' involvement in a case till its final disposal is viewed as a burden by the LAC. Instead of having their dues cleared at regular intervals, LACs are forced to wait for long durations. This uncertain and prolonged payment process results in a decrease in enthusiasm and efficiency, as the LACs cease to feel responsible and offer the degree of diligence, they would to other private matters in which they are better paid. However, the biggest victim in this process is the client – and in the long run, the legal aid system itself.

The current empanelment process of LACs tends to prioritise seniority over competency and dedication, as observed in the practices of DLSAs. Research indicates that LACs are selected based on their years



of practice rather than their abilities, with no mechanism in place to assess their competence during empanelment.<sup>14</sup> In many districts, DLSAs rely on lists provided by local bar associations to select LACs, with preference given to experience over commitment or competency.<sup>15</sup> This selection process lacks transparency, leading to criticisms from LACs regarding the arbitrary allocation of legal aid cases. Furthermore, due to the lack of infrastructure and independent chambers, LACs often interact with beneficiaries in court complexes, hindering effective communication and fostering a sense of mistrust among beneficiaries. The absence of proper infrastructure and resources further complicates the situation, with LACs facing difficulties in conducting research or referencing legal materials for their cases.<sup>16</sup> The nature of empanelment also poses a significant challenge, with many LACs advocating for full-time, tenured positions to enhance their commitment and accountability. Additionally, LACs often feel undervalued and stigmatised within the legal community, as their efforts are not adequately recognized or incentivized.

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<sup>14</sup> Jeet Maan Singh, *Plight of Legal Aid Counsels at the District Courts of India*, ECON. & POL. WEEKLY, Vol. 55, Issue No. 19 (2020), <https://www.epw.in/engage/article/plight-legal-aid-counsels-district-courts-india> (last visited May 5, 2024).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

A lack of faith in the competency of legal aid lawyers impacts the confidence of clients with the system. This makes people wary of availing legal aid and thus, forces them to pay substantial money to touts offering cheap – and often fraudulent – services. People might also have to undergo great financial hardships to make out-of-pocket payments by resorting to selling property or valuable assets to be able to afford private lawyers. All this impacts the realisation of the right to equal opportunity before the law, and equal access to justice for all.

In essence, while the LSA Act represents a significant step towards ensuring legal empowerment and access to justice for women, particularly survivors of domestic violence, its impact is contingent upon addressing the systemic challenges and barriers that hinder effective implementation. Recognizing and addressing these challenges is essential to realising the promise of equality and justice enshrined in the LSA Act for all women, irrespective of their social or economic status.

## **PART – B**

### **IV. HISTORICAL EVOLUTION OF RIGHTS OF MARRIED WOMEN**

A conversation around access to justice for women is incomplete without evaluating the effectiveness of legislations that secure the rights. The rights of women have always been subject to change from time to time and there have always been impediments and

barriers with respect to implementation of such rights, even where they are acknowledged. The trajectory of legislation concerning matrimonial offences in India is marked by a slow but evolving response to the complex dynamic within marital relationships. Post-independence, the Constitution of India, under Article 15(3), granted the State the authority to implement affirmative actions aimed at protecting women. However, it took a considerable fourteen years for a specific legislation addressing domestic violence against women to materialise.<sup>17</sup>

In 1961, the Dowry Prohibition Act came into force, criminalising the act of giving and receiving dowries. During those times, domestic violence as a crime was primarily considered to involve the horrifying act of husbands brutally murdering their wives on account of dowry-related issues.<sup>18</sup> Thus, the legislative response primarily focused on addressing dowry-related violence, leading to the introduction of various provisions.

As the understanding of domestic violence expanded, the Criminal Law (Second Amendment) Act of 1983, introduced Section 498A into the Indian Penal Code

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<sup>17</sup> Rehan Abeyratne et al., Domestic Violence Legislation in India: The Pitfalls of a Human Rights Approach to Gender Equality, 21 AM. U. J. GENDER, SOC. POL'Y & L. 1 (2013).

<sup>18</sup> Flavia Agnes et al., *Protection of Women from Domestic Violence*, 50 ECON. & POL. WEEKLY 76, 84 (2015).

(IPC) of 1860,<sup>19</sup> empowering the legal system to impose criminal charges and a jail term upon individuals subjecting their wives to cruelty.<sup>20</sup> It was classified as a cognizable and non-bailable offence. This marked a significant step in recognizing and penalising a broader spectrum of abusive behaviours within marital relationships.

In 1986, the addition of Section 304B to the IPC<sup>21</sup> (dowry death), allowed criminal action against the husband or his relatives if a newly married woman died under suspicious circumstances within seven years of her marriage.

However, these legislative interventions were not without their shortcomings. Recognizing the gaps in the existing legal framework and facing challenges rooted in deeply entrenched patriarchal cultural norms, Lawyers' Collective (non-governmental organization) initiated the drafting of a bill to address the same in 1993.<sup>22</sup> Over a decade of negotiations and impactful advocacy culminated in the enactment of the PWDVA in 2005. The PWDVA provides comprehensive legal remedies, both civil and criminal, to female victims of domestic violence. It allows women to request injunctions and protective orders and introduces criminal provisions, including

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<sup>19</sup> Abeyratne, *supra* note 18.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

imprisonment and fines, against the perpetrators.<sup>23</sup> Notably, it defines “domestic relationships” expansively, extending protection to unmarried women, siblings, and others residing with the alleged perpetrator in live-in relationships.<sup>24</sup> It also emphasises the notion of a “shared household,” and the “right to residence,” preventing women from being forcibly evicted from their marital homes. Section 20(1) of PWDVA empowers Magistrates to grant monetary relief to the aggrieved woman under the Act.<sup>25</sup> It also establishes two new roles: the Protection Officer (PO), (often a woman police officer who assists abused women in accessing medical assistance and complying with a Magistrate’s instructions) and the Service Provider (SP) (to help the victims with legal procedure in the submission of a Domestic Incident Report (DIR) before a local Magistrate).<sup>26</sup>

## **V. CHALLENGES AND AMBIGUITIES IN THE DOWRY PROHIBITION LEGISLATION**

“Marriages are made in heaven,” is an adage. A bride leaves the parental home for a matrimonial home leaving behind sweet memories therewith a hope that she will see a new world full of love in her groom’s house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

expects not only to be a daughter in law, but a daughter in fact. Alas! The alarming rise in the number of cases involving harassment to the newly wed girl for dowry shatters the dreams. In-laws are characterized to be outlaws for perpetrating terrorism which destroys the matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction.”<sup>27</sup>

The first legislation to address the rising social evil of dowry<sup>28</sup> was introduced in 1961 through the Dowry Prohibition Act (Act 28 of 1961). In part, Section 498A of the IPC<sup>29</sup> also addressed any unlawful demand of property by the husband or his relatives from the wife.<sup>30</sup>

However, the enactment of the dowry-prohibition legislation in its original form was inadequate. The 91<sup>st</sup> Law Commission Report emphasised the need for

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<sup>27</sup> Kamlesh Panjiyar v. State of Bihar, (2005) 2 SCC 388.

<sup>28</sup> U.N. Office on Drugs & Crime, *Global Study on Homicide: Gender-Related Killing of Women and Girls* 12 (2018), <https://www.unodc.org/unodc/en/data-and-analysis/statistics/crime/global-study-on-homicide.html>.

<sup>29</sup> Criminal Law (Second Amendment) Act, 1983, No. 43 of 1983.

<sup>30</sup> Amendments were also made to the Code of Criminal Procedure, 1973 and Evidence Act, 1872. Section 174 of the Code of Criminal Procedure, 1973 secured post-mortem in a case of suicide or death of a woman within seven years of her marriage. Section 113A of Evidence Act, 1872 provided a presumption of cruelty as defined under Section 498-A, I.P.C. against the husband or his relative if the wife commits suicide within seven years from the marriage.

stringent laws to curb the menace of dowry death. In particular, it was highlighted that in practice the two main impediments that arose were: *“either the facts do not fully fit into the pigeon hole of any known offence”* or *“the peculiarities of the situation are such that proof of directly incriminating facts is thereby rendered difficult.”*

Taking a cue from the above, Section 304B of the IPC, introduced in 1986, emerged as a legislative response to the escalating cases of dowry-related deaths and cruelty against newly married women. It introduced a new criminal offence - dowry deaths with the aim of providing a legal mechanism to curb such offences. The legislative intent was to hold the perpetrators accountable for causing the death of a woman within seven years of marriage due to dowry-related harassment. It is stringent inasmuch as it provides a minimum sentence of seven years of imprisonment for those found guilty of dowry-related death.

The controversial parts that exist here include the assumption that after seven years of marriage, the cruelty ceases or is non-existent.<sup>31</sup> The provision also poses challenges in interpreting terms like ‘otherwise than in normal circumstances,’ ‘soon before her

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<sup>31</sup> Ved Kumari, Gender Analysis of Indian Penal Code, in *Engendering Law: Essays in Honour of Lotika Sarkar* 139, 139-60 (Amita Dhanda & Archana Parashar eds., 1999).

death,<sup>32</sup> and the duration required to prove harassment for dowry.<sup>33</sup>

Illustratively, a strict/literal interpretation of the term “soon before” in this provision would lead to absurdity and therefore it is essential to take into account the legislative intent behind framing of the legislation. Recognizing the need for the same, the Supreme Court of India provided that *“the phrase ‘soon before’ as appearing in Section 304-B, IPC cannot be construed to mean ‘immediately before’. The prosecution must establish the existence of ‘proximate and live link’ between the dowry death and cruelty or harassment for dowry demand by the husband or his relatives.”*<sup>34</sup>

More than that, what continues to remain a trouble is the broader understanding that a bride’s family is ready to make favours for the husband and his family and that the husband and his family are prepared to take the same, all in the name of pleasant takings/so-called ‘voluntary gifts’ during the course of marriage. The Act fails to address such instances within the definition of dowry often leading it to be a mechanism to escape the limits of the law. The authors question the voluntariness of such pleasantries - is it really voluntary when it is based

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Satbir Singh & Anr. v. State of Haryana, Criminal Appeal Nos. 1735-1736 of 2010 (India).



on custom or societal pressure? Further, is the legislature unaware of the so-called voluntariness? Or should we say the legislature has failed to take into account these very evils that the law was enacted to eradicate? This leads to situations where arguments are taken against the application of the provision in courts – gifts were voluntary, out of affection, or for other events following the marriage such as childbirth. It is also seen that such dowry demands are well-placed in educated families that have knowledge about the existing law and therefore ensure that they can use these loopholes to avoid any liability under the Act. Therefore, it is imperative for the law to take into account the social settings when enacting provisions to combat the menace of dowry.

## **VI. SECTION 498A, IPC: CRITIQUE AND CONTROVERSIES**

Section 498A of the IPC, introduced in 1983, marked a legislative response to the escalating incidents of cruelty and dowry-related violence against married women. This provision criminalises cruelty by husbands or their relatives, aiming to provide immediate legal recourse and act as a deterrent against domestic violence within marriages. The provision was enacted as a response to the prevailing societal issues surrounding cruelty and dowry-related offences against married women in India with a legislative intent of addressing them

comprehensively by criminalising cruelty and providing legal mechanisms for immediate action.

However, it has been criticised on numerous grounds. The criticism surrounds the burden of proof, requiring visible evidence of physical harm like bruises, burns, and black and blue marks, making it challenging for the aggrieved to file a complaint.<sup>35</sup> Emotional abuse, another critical aspect, is nearly impossible to prove through documentation, mainly because very few women have access to psychological healthcare.<sup>36</sup> Critics also argue that Section 498A has a limited scope and lacks State intervention until after a woman loses her life.<sup>37</sup> This provision reacts only when a woman or her family files a complaint, which can be problematic in situations where victims may be unable or unwilling to complain. The protection under Section 498A of IPC is limited to married women, excluding unmarried, widowed, or separated women from its ambit of protection.<sup>38</sup> This limitation fails to address situations where women are subjected to cruelty by brothers or natal family members. Its emphasis on “grave” injury or danger to life as a prerequisite for taking action and fails to

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<sup>35</sup> Sreeparna Chattopadhyay, Gendering Legal Discourse: A Critical Feminist Analysis of Domestic Violence Adjudication in India, 6 J. L. & SOC. JUST. & GLOBAL DEV. 1, 1-17 (2017).

<sup>36</sup> *Id.*

<sup>37</sup> Amita Dhanda Et Al., Engendering Law: Essays In Honour Of Lotika Sarkar 139-160 (Eastern Book Co. 2007).

<sup>38</sup> *Id.*

account for instances of less severe cruelty that women may endure in their households.<sup>39</sup> Even otherwise, in practice, it is essential for an aggrieved woman to register an FIR in a case of 498-A IPC in the nearest police station to where the offence has taken place. Largely such offences take place at the matrimonial home and the complainant has to cooperate with the investigating authorities during the course of investigation and present herself as and when required. This leads to multiple difficulties for the complainant. To begin with she must keep coming back to the relevant police station and court from time to time as her case proceeds. This also leads her to be in close proximity to the accused despite her unwillingness otherwise. Moreover, there are instances where the complainants find themselves helpless as the in-laws find ways to manage the investigating authorities through their hold in the region and deter the complainant from effectively registering an FIR. Further, complainants are often aware of the hurdles of having to travel to the relevant police station time and again and therefore prefer to either not pursue the case or leave them mid-way once they have escaped the abusive households and moved to a different location. Although as on paper there exists a concept of registration of Zero FIR<sup>40</sup> and its transfer to the

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<sup>39</sup> *Id.*

<sup>40</sup> In a case where the information regarding commission of a crime is reported that is not covered within the jurisdiction of

relevant police station where the crime has taken place, in reality, Zero FIRs are not registered easily. Therefore, the argument that a zero FIR could be registered also does not come to much avail. The Supreme Court of India has taken note of the said social reality wherein couples tend to hail from different States i.e., the matrimonial home is located in a different State from her parental home. In *Rupali Devi v. State of U.P.*<sup>41</sup> it observed that “*adverse effects on mental health of the wife even while residing in her parental home on account of the acts committed in the matrimonial home would amount to commission of cruelty within the meaning of Section 498A at the parental home.*” Therefore, it laid down that courts within the jurisdiction of which a wife takes shelter after leaving or being driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the IPC.

Apart from this, one of the foremost criticisms of Section 498-A comes from Men’s Rights Associations (MRAs) about potential misuse, leading to debates on the balance between victim protection and preventing

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the police station where it is reported then that information is recorded but not numbered and is referred to as ‘Zero FIR’. The said Zero FIR is then transferred to the relevant police station.

<sup>41</sup> *Rupali Devi v. State of U.P.*, (2019) 5 SCC 384 (India).

false accusations.<sup>42</sup> It is alleged that women are ‘abusing the law,’ purportedly on the basis that there are low conviction rates as against high arrest rates. However, it is important to note that a mere low conviction rate does not necessarily indicate misuse of the law.<sup>43</sup> Higher acquittals can result from various other factors such as inadequate investigations, giving the benefit of the doubt to the accused, or bias against women, systemic biases, biases within the police and the judiciary seeking legal remedies.<sup>44</sup> Furthermore, a significant number of cases are categorised as ‘false’ after the initial complaint.<sup>45</sup> Categorising these complaints as ‘false’ is, however, problematic, given that the victim may have reconciled with the perpetrator, witnesses may have changed their testimonies to favour the accused, or the complainant might have opted to withdraw her complaint for various other reasons.<sup>46</sup> Additionally, it is crucial to recognize that the reported statistics on violence against women in India are lower than the actual prevalence.<sup>47</sup>

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<sup>42</sup> Vidya Dinker, *Balancing Act: Examining the Positive Aspects and Challenges of Section 498A*, 25 J. INDIAN LEGAL STUD. 67, 78-82 (2021).

<sup>43</sup> The Wire, *Section 498A and Domestic Cruelty Laws*, <https://thewire.in/gender/section-498a-domestic-cruelty-laws> (last visited Nov. 28, 2023).

<sup>44</sup> *Id.*

<sup>45</sup> Abeyratne, *supra* note 18.

<sup>46</sup> *Id.*

<sup>47</sup> THE WIRE, *supra* note 44.

To challenge these erroneous statistics and dispel the misconception of misuse, Vimochana, a women's rights organization, conducted a study in Bangalore.<sup>48</sup> It found that claims of married men experiencing trauma and resorting to suicide due to legal proceedings under Section 498-A of IPC lack substantial support. There is an absence of both qualitative and quantitative data to substantiate these unfounded assertions. Conversely, there is a wealth of unambiguous data available in categories such as `dowry-related issues, divorce, extramarital affairs, and physical abuse (including rape), indicating a notably higher number of suicides among married women than men.<sup>49</sup> Thus, law is not being misused by women confronting marital cruelty; instead, it is being manipulated by men's rights advocates, the State, and its agencies as a whole.<sup>50</sup> Moreover, NFHS-5 clearly shows the existing underreporting in cases of intimate partner violence.<sup>51</sup> Therefore, the statistics seem to show that women hardly use the provision Section 498-A let alone gravely misuse it.

There have also been developments in the law inasmuch as the Supreme Court emphasised concerns about arbitrary arrests under Section 498-

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Only 1 in 9 women reported cases of intimate partner violence, NFHS-5.

A of IPC, underscoring the need for safeguards against potential misuse.<sup>52</sup> It reiterated the importance of judicious application of Section 498-A of IPC to prevent harassment of innocent individuals, emphasising that arrests should not be made mechanically.<sup>53</sup>

The examination of Section 498-A has unearthed both its positive aspects and inherent challenges. To fortify its efficacy and address persistent gaps, several potential reforms could be considered such as establishment of clear guidelines for evidence standards and recognizing that emotional abuse may not always manifest physically. This reform aims to alleviate the burden on victims, acknowledging the nuanced nature of domestic violence. The Supreme Court in the case of *Rupali Devi v. State of UP*<sup>54</sup> acknowledged emotional abuse as a crucial facet of cruelty under Section 498A of IPC. Further, in respect of the expanded scope of Section 498-A it suggested that it must include protection for unmarried, widowed, or separated women facing domestic violence.<sup>55</sup> This recognizes the diverse forms of abusive relationships beyond the marital context. Moreover, to distinguish between genuine complaints and malicious intentions it is necessary to implement

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<sup>52</sup> Arnesh Kumar v. State of Bihar, (2014) 4 SCC 126 (India).

<sup>53</sup> Babloo Chauhan v. State of Uttarakhand, (2022) 10 SCC 56 (India).

<sup>54</sup> (2018) 6 SCC 353.

<sup>55</sup> Kiran Bedi v. State of Delhi, (2019) 8 SCC 341 (India).

safeguards against misuse without compromising victim protection by introducing stringent penalties for false complaints, ensuring a balance between preventing misuse and safeguarding genuine victims.<sup>56</sup> It goes without saying that there exists a continued need for sensitization programs to tackle preconceived notions in handling Section 498-A cases through comprehensive educational programs and awareness campaigns to educate law enforcement officials, the judiciary, and the public about the nuances of domestic violence.<sup>57</sup> A recent study in Haryana<sup>58</sup> shows that it is not easy for women to seek justice since not only are cases of violence against women, in which women are the primary complainants, less likely to be registered and more likely to be dismissed in court or result in acquittals, a gender bias is visible even in other forms, from registration to prosecution, resulting in, what the researchers call, “multi-stage” discrimination. Such sensitization will help tackle barriers such as women being made to wait longer and frequently being ‘counselled’ to withdraw their complaints. This can help reduce biases, improve understanding, and encourage responsible reporting. Lastly, the establishment of dedicated fast-track

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<sup>56</sup> Siddharth Mehta v. State of Maharashtra, (2020) 10 SCC 512.

<sup>57</sup> State of Maharashtra v. Shubham, (2019) 9 SCC 756.

<sup>58</sup> Jassal N., Does Victim Gender Matter for Justice Delivery? Police and Judicial Responses to Women’s Cases in India, AM. POL. SCI. REV., 1-27 (2023), <https://doi.org/10.1017/S0003055423000916>.



courts for hearing cases under Section 498-A will expedite the legal process.<sup>59</sup> This reform addresses concerns about delayed justice and provides timely resolution to victims.

## **VII. CRITIQUING THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

The law of domestic violence defines abuse to include physical, sexual, verbal and emotional and economic abuse. The legislation provides that even a single act of commission or omission may constitute domestic violence. More importantly, it overrides the exception in Section 375, IPC by bringing sexual offence as a ground for divorce. The PWDVA accords the right to a shared household to an aggrieved under the law so that she is not evicted or excluded from the shared household or any part of it in case she reports a case of domestic violence. Further, there exists additional protection in the form of restraining orders prohibiting respondents from committing further acts of violence, entering the place of residence or employment, attempting to communicate with the aggrieved and such other similar remedies. More importantly, the Act recognized that the justice delivery system has largely been inaccessible to women and it provided for Protection Officers – who were to be the eyes and ears or the outreach arm of

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<sup>59</sup> Preeti Sharma v. State of Rajasthan, (2016) 9 SCC 392.

the courts to help the women gather evidence to support their case.<sup>60</sup>

The PWDVA, while a significant step towards addressing domestic violence in India, is not without its critiques and limitations. At the outset, it is difficult for an aggrieved woman to find out or prove the actual income of the husband in cases of maintenance. This must be seen in the light of the fact that men do not tend to share details of their finances or income with their wives and the wives are largely kept in the dark. Therefore, for the law to then expect the wife to find out or prove the actual income of the husband based on which maintenance will be awarded to the wife is onerous. Moreover, the Act is aimed at providing immediate relief but as per the Lawyers Collective Report<sup>61</sup> (LCWRI, 2013), none of the Courts has been able to achieve the provision of a timeline of 60 days for passing of orders.<sup>62</sup> Thus, complainants find themselves remediless leading to a

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<sup>60</sup> Kalpana Kannabiran, *Women And Law: Critical Feminist Perspectives* 10 (Sage Publications 2006).

<sup>61</sup> The National Mission for Empowerment of Women (NMEW) & The Lawyer's Collective Women's Rights Initiative (LCWRI), *Resource Tool for Monitoring And Evaluating The Implementation of The Protection of Women From Domestic Violence Act, 2005* (Lawyers Collective, 2013), <https://www.lawyerscollective.org/> (Last Visited Dec. 30, 2023).

<sup>62</sup> Section 12(5), Protection of Women from Domestic Violence Act, 2005, mandates that the Magistrate shall endeavour to dispose of every application made under Section 12(1) within 60 days of its first hearing.

decrease in emotional, economic and mental well-being and increasing their vulnerabilities. Recently, the Karnataka High Court stated that the victims' grievances such as maintenance or shelter etc., must be addressed with immediacy, which is why the legislation has mandated a specific time frame.<sup>63</sup> The Madhya Pradesh High Court has acknowledged the cumbersome procedure of enforcing orders of maintenance that thwarts the aim of obtaining maintenance amount speedily. It went a step ahead to hold that "law enforcing authority has jurisdiction to register the Criminal Case under Section 31 of the Act for non-payment of maintenance allowance which is deemed to be breach of protection order under Section 18."<sup>64</sup> However, the High Court of Delhi has expressed a different view by observing that the statutory framework under the PWDVA and Protection of Women from Domestic Violence Rules, 2006<sup>65</sup> provide that an order of maintenance has to be enforced by way of execution proceedings under Section 20(6) of the PWDVA and an order of monetary relief cannot be interpreted to fall within the ambit of 'protection order' under Section 31 of PWDVA.<sup>66</sup>

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<sup>63</sup> Kavitha M. v. Raghu, 2023 SCC OnLine Kar 11.

<sup>64</sup> S. Amalraj v. State and Anr. CrI.O.P.(MD)No.15704 of 2018, Para 21.

<sup>65</sup> Rule 5(6), Protection of Women from Domestic Violence Rules, 2006.

<sup>66</sup> Anish Pramod Patel v. Kiran Jyoti Mani, CrI. M.C. 1951/2023 and CrI. M.A. 7426/2023.

Further, the terms “aggrieved person” and “respondent” maintain a gendered bias, excluding men as potential victims of domestic violence.<sup>67</sup> More recently, a petition has been filed in the Supreme Court of India to examine whether a transgender woman who has undergone sex reassignment surgery can be an “aggrieved person” under the PWDVA and has the right to seek interim maintenance in a domestic violence case.<sup>68</sup> This must be examined in the light of the landmark judgement, *National Legal Services Authority v. Union of India*<sup>69</sup> which upholds fundamental rights of transgender persons in India and upholds rights of all persons to self-identify their gender as male, female or third gender. Additionally, gender bias under the law extends to marginalized communities, where violence against women, including rape victims, is not recognized as an aggravated form of the crime due to casteist and socio-political factors.<sup>70</sup> The lack of clear definitions for specific terms, particularly in the category of “verbal and emotional abuse,” creates ambiguity resulting in misapplication of the law.<sup>71</sup> Further, when it comes to the implementation, it is observed

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<sup>67</sup> Nyayshastram, The Dangerous, False Myth That Women Routinely Misuse Domestic Cruelty Laws, THE WIRE, <https://thewire.in> (last visited Nov. 28, 2023).

<sup>68</sup> Vithal Manik Khatri v. Sagar Sanjay Kamble, Special Leave Petition (Criminal) Diary No. 34425/2023 (India).

<sup>69</sup> National Legal Services Authority v. Union of India, AIR 2014 SC 1863 (India).

<sup>70</sup> *Id.*

<sup>71</sup> Abeyratne, *supra* note 18.

that courts in India have been hesitant in issuing notice to respondents such as sister-in-law, husband or sister-in-law under the PWDVA on the grounds that they do not reside within a shared household with the aggrieved woman/complainant. This must be critically examined alongside the definition of domestic violence which is very wide to include acts of emotional and verbal abuse which in today's times of modern means of communication do not require physical proximity to be executed. The High Court of Bombay has also recognized that mental cruelty is an abstract concept and can be committed even if the relatives live separately.<sup>72</sup>

Moreover, inadequate response of law enforcement agencies, particularly the police, in reporting and investigating and the perception that domestic violence is a private family matter, leaves victims without any recourse.<sup>73</sup> It is seen that judges also often allow their personal gender-related subjectivities to influence their judgments in domestic violence cases.<sup>74</sup> These biases are rooted in regressive beliefs about the family, roles of daughters-in-law, causing the judiciary to inadvertently reinforce patriarchal norms.<sup>75</sup> The absence of provisions for protecting individuals in

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<sup>72</sup> SK and Ors. v. State of Maharashtra and Anr., Criminal Application (APL) No. 1660 of 2022.

<sup>73</sup> *Id.*

<sup>74</sup> Chattopadhyay, *supra* note 36.

<sup>75</sup> *Id.*

homosexual or polyamorous relationships, interpretations of court restricting live-in relationships to unmarried individuals of a major age in heterosexual relationships exclude protection for those in non-heteronormative relationships, raising questions on Act's ability to adapt to more inclusive definitions of cruelty.<sup>76</sup>

There exists a dearth in the adequate number of Protection Officers appointed under the PWDVA.<sup>77</sup> The appointment of government officials as Protection Officers without specialised training, their lack of expertise hinders their ability to effectively handle domestic violence cases.<sup>78</sup> Consequently, victims and advocates lose faith in the legal system's capacity to provide adequate protection and support. Finally, the Act mandates the presence of shelter homes in each district, but many districts lack even a single shelter home.<sup>79</sup> This deficiency is likely due to budgetary allocation issues, highlighting the necessity for increased financial commitment to ensure the protection of domestic violence victims.

To address these issues, women's organizations have proposed creating a dedicated fund for magistrates and judges handling maintenance orders, relieving

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<sup>76</sup> Nyayshastram, *supra* note 68.

<sup>77</sup> *We The Women of India v. Union of India & Ors.*, W.P. (C) No. 1156/2021 (India).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

the burden on the victims. The responsibility to provide financial support to affected wives should fall on the government, with subsequent efforts made to recover the amount from the husband. Furthermore, judicial reforms, including strengthening magistrate courts across the country, are essential to improving the effectiveness of domestic violence legislation.<sup>80</sup>

## **PART - C**

### **VIII. CONCLUSION**

Gender bias is evident in its conceptualization, formulation, and implementation and despite the legislature's intended protective nature, it has often fallen short of effectively safeguarding women against domestic violence.<sup>81</sup> The failure to recognize diverse forms of domestic violence, coupled with the stigmatisation of women seeking assistance, compounds the challenges.<sup>82</sup> Moreover, there exist blatant gaps inasmuch as grave offences such as marital rape still stand as an exception within the marital context in India.

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<sup>80</sup> EPW, *What Survivors of Domestic Violence Need in Their New Abodes*, *ECON. & POL. WKLY.*, <https://www.epw.in/engage/article/what-survivors-domestic-violence-need-their-new> (last visited Nov. 28, 2023).

<sup>81</sup> Kumari, *supra* note 33.

<sup>82</sup> EPW, *supra* note 81.

Ongoing debates about Intimate Partner Violence (IPV) further add complexity to the legal framework's understanding of domestic violence.<sup>83</sup> It reinforces stereotypical images of women as weak and in need of protection, maintains the private-public dichotomy and incorporates patriarchal values, excluding perspectives, interests, and experiences of women.<sup>84</sup>

While acknowledging the limitations of these provisions, it's important to recognize their role in compelling husbands to negotiate. The non-bailable nature of the law effectively conveys to husbands that their wives will not tolerate violence without resistance.<sup>85</sup> The current PWDVA falls short in extending protections to same-sex couples.<sup>86</sup> The plight of transgender and queer individuals facing domestic violence remains largely unacknowledged, overshadowed by broader discussions on gender-based violence. Despite significant strides in recognizing and addressing domestic violence, the unique challenges and experiences of transgender and queer individuals in abusive relationships often go unnoticed. Thus, the existing discourse and legal frameworks, primarily tailored for heterosexual

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<sup>83</sup> Donald G. Dutton, *The Case Against the Role of Gender in Intimate Partner Violence*, 17 *AGGRESS. VIOLENT BEHAV.* 99, 99–104 (2012).

<sup>84</sup> Kumari, *supra* note 33.

<sup>85</sup> EPW, *supra* note 81.

<sup>86</sup> Mansi Dagrass, *Victimization of LGBT Community in India*, SSRN (2021), <https://papers.ssrn.com>.



relationships, may inadvertently marginalise this vulnerable demographic.<sup>87</sup>

The enactment of laws must be coupled with proper implementation inasmuch as lack of effective investigation,<sup>88</sup> and sensitization of the largely hostile criminal justice system. As per the 2018 Commonwealth Human Rights Initiative study<sup>89</sup> including 29 states and seven Union Territories, per capita spending on legal aid in India is Rs 0.75, one of the lowest in the world. In 2019-20, as per Tata Trusts' India Justice Report 2020,<sup>90</sup> per capita spending on legal aid in India was Rs 1.05. There is an urgent need to increase this if we are looking to promote free legal aid as an effective mechanism to exercise and secure legal rights for those identified in Section 12 of the LSA Act. This fund can be utilized towards revisions to the current payment system for LACs and increase in awareness activities. These revisions towards the payments of LACs include incorporating expenses related to drafting

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<sup>87</sup> *Id.*

<sup>88</sup> The Delhi High Court in *State v. Dheeraj Sharma & Ors.*, CrI.L.P. 299/2022, CrI.M.A. 12577/2022 deprecated the indifference and the lackadaisical investigation by the investigating authorities in a case of a 23-year-old woman who lost her life to an unnatural death within six months of her marriage.

<sup>89</sup> 'Commonwealth Human Rights Initiative, Hope Behind Bars? Status Report on Legal Aid for Persons in Custody (2018).

<sup>90</sup> Tata Trusts, India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid (2019).

substantive pleadings, miscellaneous applications, and representation at both High Courts and subordinate courts, along with providing conveyance fees for LACs to visit clients in prisons or remote areas. It is recommended that the revisions align with the NALSA Minimum fees range and relevant Government Resolution on Fee Structure of Advocates. Furthermore, the payment intervals for lawyers should be re-evaluated. Instead of the current two-tier approach, where payment is made only upon assignment and then upon completion of a case, payments could be made after each hearing or on a quarterly basis. To streamline reporting processes, the development of a web portal and mobile application is suggested. These platforms would facilitate lawyers in reporting case updates, submitting payment receipts, and receiving regular payments. At the District Legal Services Authority level, a standardized reporting mechanism should be established for lawyers to report after each court appearance, ensuring simplicity and minimal burden on lawyers. Additionally, assigning a paralegal to each court could help alleviate the reporting burden on lawyers by updating records after each hearing, with a register available in the legal services authority's front office. Circulating duty notes and checklists for lawyers, as well as checklists of services covered under free legal aid, would aid both lawyers and clients. Finally, implementing a system where judicial officers mark lawyers' appearances in court would help prevent corruption or manipulation.

Moving beyond surface-level discussions, this article aims to highlight specific legal sections, judicial interpretations, and practical hurdles that leave victims of matrimonial offences without adequate legal recourse. By acknowledging these gaps, we can initiate discussions aimed at meaningful reforms to better protect individuals facing domestic violence within the context of marriage.

At the same time there is also a need to recognize the dynamic nature of domestic violence, as seen in recent cases like the one in Gadchiroli, where victims turn perpetrators.<sup>91</sup> It is a stark reminder that the landscape of domestic violence is constantly evolving, and a more inclusive and adaptable response is needed. It has become imperative for policymakers and society at large to engage in a comprehensive re-evaluation of existing legislation, fostering a more responsive and nuanced approach to address the multifaceted challenges posed by domestic violence in India. It goes without saying that such laws must address the prevalence of law enforcement corruption, hunger for monetary gain, importance of social status and attitude towards women in order to effectively curtail the violence within marriage.

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<sup>91</sup> The Indian Express, Gadchiroli Village: 2 Women Plan Over 2 Months, kill 5 Family Members Using Thallium, *The Indian Express*, <https://indianexpress.com> (last visited Nov. 28, 2023).

## Chapter 3

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# FREE LEGAL AID IN INTERNATIONAL LAW: CURRENT SCENARIO AND CHALLENGES

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*“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”*

*- Justice Hugo Black*

### ABSTRACT

Legal aid symbolizes the provision of assistance to those who are often unable to afford legal counsel and access to the judicial system. Legal aid is the provision of support to individuals who have limited income or face other disadvantages, enabling them to use the legal system to protect their rights. To effectively assist those in need, it is imperative that we provide them access to legal representation, both inside and outside the confines of the justice delivery system. This chapter aims to trace the entitlement to

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legal assistance as stipulated in international law and understand the discourse on global legal responsibilities by examining the influence of additional rights on the requirement of nations to provide legal assistance and guarantee equitable justice.

**Keywords:** Legal Aid, Legal Assistance, Equitable Justice.

## **I. INTRODUCTION**

Access to justice is an essential entitlement of all individuals, acknowledged and safeguarded by many international legal frameworks. Nevertheless, a significant number of people worldwide, belonging to marginalized and disadvantaged groups, are unable to exercise this right owing to financial limitations and the absence of legal counsel. From an international law viewpoint, the provision of free legal assistance is of utmost significance in this context.

The obligation of states to offer legal help has been articulated on a variety of frameworks during the last century, including moral, political, social justice, and legal grounds. From a wider viewpoint on international law, giving out free legal assistance helps to advance and uphold human rights. It helps in addressing systemic inequalities and ensures that individuals, especially those from vulnerable groups,

have the opportunity to seek remedies for unfair treatment.<sup>3</sup>

Furthermore, the provision of international law demonstrates a dedication to maintaining the rule of law and guaranteeing that fairness is not only available to the wealthy but also available to the needy. In this sense, free legal aid serves as a mechanism for advancing global efforts towards achieving a more just and equitable world.<sup>4</sup>

## **II. LAW AND POVERTY: A PROBLEMATIC RELATIONSHIP**

Law and poverty are two interconnected issues that have a great effect on societies around the world. The link between the two is complicated and has many different aspects. It is imperative to understand the role of free legal aid in addressing the challenges posed by poverty within the framework of international law. In many cases, poverty is exacerbated by systemic injustices, discrimination, and lack of access to legal recourse.<sup>5</sup> This is the point

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<sup>3</sup> Jack Goldsmith et.al., Law for States: International Law, Constitutional Law, Public Law, Daryl Levinson, 122(7) HARVARD LAW REVIEW 1791-1868 (2009).

<sup>4</sup> Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72(2) THE UNIVERSITY OF CHICAGO LAW REVIEW 469-563 (2005).

<sup>5</sup> Mizanie Abate et.al., Advancing access to justice for the poor and vulnerable through legal clinics in Ethiopia: constraints and opportunities, 11(1) MIZAN LAW REVIEW 1-31 (2017).

at which free legal assistance becomes extremely important. Poverty is an evident issue that impacts millions of individuals worldwide. It encompasses the deprivation of fundamental human rights.

When considering the needs of the poor, the legal system issues become more prominent. Illiteracy, social constraints, and organizational corruption prevent the needy from accessing justice.<sup>6</sup> In that sense, those in need cannot access the legal system. They find themselves unintentionally involved in it when confronted with legal issues. So, it has been noticed that the needy resort to the legal system when they are obliged to do so, as defendants or accused. People who live in cities and are poor are punished for their poverty when activities like sleeping on the street, emigration, and sex work are made illegal. To fulfil the demands of this sphere for access to justice, an immense extent of legislative and institutional transformation is the need of the hour. The gap between urban and rural legal services continues in many nations.

The decision to increase the income ceiling rests with the individual states. Scheduled caste members are free from income tax limitations, although states may raise them. People from certain categories, such as women, children, the handicapped, and scheduled castes and tribes, are exempt from having to meet a

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<sup>6</sup> *Id.*

minimum income requirement. The authorities under the scheme of free legal aid provides the needy with State-paid counsel, pay the court fee, and cover incidental costs. A client has no financial obligation for a case when a legal services authority pays for it.

In the early 20th century, after World War I, the “Covenant of the League of Nations” had numerous provisions that fostered a worldwide focus on human rights. In addition, everyone realized that social fairness for everyone is the path to global peace.<sup>7</sup>

Access to counsel was very important because gaining social justice for everyone would not be possible without it. Following the completion of the required preparations under the direction of the “League of Nations”, the “International Committee of Legal Aid Experts” met in Geneva from the 30th of July to the 31st of August, 1924 to provide legal assistance.<sup>8</sup> They focused primarily on the issue of ensuring that those who were less privileged received justice. In 1927, the League of Nations released the results of a study that it had conducted on legal aid systems all across the globe.<sup>9</sup>

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<sup>7</sup> Mark Mazower, *The Strange Triumph of Human Rights, 1933-1950*, 47(2) THE HISTORICAL JOURNAL 379-398 (2004).

<sup>8</sup> Dolly Choudhury, *Concept of Free Legal Aid- A Comparative Analysis Free Legal Aid in India, United Kingdom and Australia*, 3(3) INTERNATIONAL JOURNALS OF LAW AND LEGAL JURISPRUDENCE STUDIES 104-120 (2016).

<sup>9</sup> J. P. Dunbabin, *The League of Nations' Place in the International System*, 78(254) HISTORY 421-442 (1993).



## **1. Ensuring Human Rights to Access Justice**

The right to access justice is a basic human right recognized in many international legal frameworks, such as the “Universal Declaration of Human Rights”<sup>10</sup> (UDHR) and the “International Covenant on Civil and Political Rights”<sup>11</sup> (ICCPR). However, a considerable obstacle to exercising this right exists for numerous individuals worldwide, especially those from marginalized and economically disadvantaged backgrounds, due to the excessive expenses associated with legal counsel and services. Free legal aid programs have arisen as a crucial means of safeguarding human rights to access justice in response to this issue. It is based on the principle of ensuring equitable access to the justice system for every individual, irrespective of their financial resources. The principle is highlighted in Article 7 of the UDHR, which asserts that “everyone is equal before the law and has the right to equal protection of the law without any discrimination”. Likewise, Article 14 of the ICCPR acknowledges the “right to legal assistance and representation for those who lack the financial means to obtain it”.<sup>12</sup>

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<sup>10</sup> Universal Declaration of Human Rights, Dec. 10, 1948, [hereinafter referred to as UDHR].

<sup>11</sup> The International Covenant on Civil and Political Rights, Dec. 16, 1996, [hereinafter referred to as ICCPR].

<sup>12</sup> Pinghua Sun & Yinghui Sun, The Cross-Cultural Origin of the Universal Declaration of Human Rights, 8 CHINA LEGAL SCI 107 (2020).

To guarantee that all persons have the chance to seek legal redress and that their rights are safeguarded, one of the primary goals of free legal aid is to overcome disparities that exist within the framework of justice. This is especially critical for marginalized and vulnerable people who may encounter structural obstacles in obtaining legal assistance. By ensuring that no one is denied justice solely because they are unable to afford legal counsel, governments and organizations can help bridge this gap and guarantee that no one is denied justice.

Moreover, the provision of free legal aid plays a vital part in advancing equality and preventing prejudice within the system of justice. It facilitates equal opportunities by empowering persons who may face financial disadvantages to exercise their rights and protect their interests in legal proceedings. It is particularly crucial in cases that involve subjects like discrimination, housing rights, employment conflicts, and family law since persons from underprivileged backgrounds are often impacted to a greater extent.

From the perspective of the global community as a whole, the significance of providing free legal assistance to guarantee access to justice has been acknowledged through a variety of international instruments and mechanisms. The “United Nations Basic Principles on the Role of Lawyers” assert the right of all individuals to avail themselves of legal

services, including pro bono legal assistance in certain cases.<sup>13</sup>

Despite these international commitments, obstacles continue to exist in the pursuit of guaranteeing universal access to free legal assistance. Numerous nations still have limitations in resources and structural obstacles that restrict the accessibility and quality of free legal assistance. Furthermore, there are gaps in the extent of coverage for certain categories of legal issues, resulting in some individuals lacking sufficient assistance.

To address these challenges, governments, and international organizations must give priority to the formation and development of free legal aid systems. This includes the allocation of sufficient funds and the formulation of comprehensive legal aid policies. Furthermore, it is important to undertake initiatives to raise public awareness about the accessibility of free legal assistance and guarantee that persons are well-informed about their rights in this regard.

Guaranteeing the right of individuals to get free legal assistance is an essential factor in maintaining the values of equality, non-discrimination, and fairness

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<sup>13</sup> Ton Liefwaard, *Access to Justice for Children: Towards a Specific Research and Implementation Agenda*, 27(2) THE INTERNATIONAL JOURNAL OF CHILDRENS RIGHTS 195-227 (2019).

in the legal system.<sup>14</sup> Governments and organizations have a considerable influence on encouraging equal access to justice for all individuals, especially those who come from marginalized and economically poor backgrounds, by offering free legal assistance. Therefore, it is crucial for international law to consistently acknowledge and endorse the significance of providing free legal aid as a way to protect human rights and promote global justice efforts.

## **2. Legal Aid under International Law: An Analysis**

After the United Nations was founded in 1945 and international human rights law developed out of it, nations around the globe started to come up with several international norms that apply to whether a state has to provide legal aid. These norms are found in agreements like covenants and conventions that bind the states that ratify them, as well as in other documents like Declarations, principles, guidelines, regulations, and recommendations that are meant to serve as a guide. The aforementioned instruments, while lacking legal enforceability over states, have received acceptance from a significant number of states and are regarded as possessing moral force.

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<sup>14</sup> S. Ortoleva, *Inaccessible justice: Human rights, persons with disabilities and the legal system*, 17 ILSA 281 (2010).

It is important to take notice of how national laws resemble these international norms and standards before examining the precise provisions included in the international instruments. In many nations that follow a dualist legal system, international and domestic laws are considered separate legal systems. Therefore, domestic laws are not impacted by international treaty provisions and domestic laws cannot be used as a foundation for initiating legal proceedings. For international law to be fully integrated into domestic law, it is essential to incorporate it through the means of new legislation, amended legislation, or existing legislation. A treaty need not be formally codified into a state's laws for the state to fulfil its obligations under the treaty. A breach results only when a state party contravenes a norm outlined in the treaty, rather than when it fails to execute the treaty into its domestic law. The nations that follow a monist system, international law, and domestic law are seen to constitute a unified and consistent legal system, where international law has the highest authority.<sup>15</sup> It is unnecessary to include the treaty in domestic law since the treaty automatically becomes a component of domestic law once it is ratified.

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<sup>15</sup> Armand de Mestral & Evan Fox-Decent, *Rethinking the Relationship Between International and Domestic Law*, 53 MCGILL LAW JOURNAL 573 (2008).

#### **4.1 Universal Declaration of Human Rights (UDHR), 1948**

On December 10, 1948, the UDHR was formally adopted by the “United Nations General Assembly”. In the preamble and 30 articles of the Declaration, we find a list of freedoms and rights granted to each individual.

In several respects, the Declaration makes it easier to attain social justice for the oppressed. Global liberty and justice are based on the preamble of the Declaration, which asserts that every individual is inherently equal and has inherent rights that cannot be taken away. It serves as the primary means of conveying the high standards and guiding principles outlined in the Declaration. The preamble makes it quite clear that the goals of the Declaration revolve around promoting equality and justice. Seeking justice and advocating for equality are ideals that complement each other.<sup>16</sup> Justice is impossible in the absence of equality. The UDHR emphasizes the concern of individuals being unable to exercise their human rights owing to financial limitations. Access to legal counsel is therefore now essential to achieving the objectives stated in the preamble to the UDHR.

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<sup>16</sup> Louis Pojman, *Theories of Equality: A Critical Analysis*, 23(2) BEHAVIOR AND PHILOSOPHY 1-27 (1995).

The guiding principles of the Declaration are outlined in Article 1 which asserts that “all human beings are born free and equal in dignity and rights”. Equality is a tool for sowing the seed of social justice, and the law is a tool for nurturing its growth. Therefore, 1948 marked the official beginning of the recognition of free legal assistance for the needy. Article 2 outlines non-discrimination and equality as cornerstone principles for the exercise of fundamental freedoms and human rights. All individuals, regardless of their financial situation, are guaranteed equal protection under the law. Legal aid mechanisms uphold the commitment to equality by enabling those with modest incomes to access the advantages associated with society’s principles of fairness. Article 7 states that “every individual is equal before the law and has the same protections”. Everyone should have access to equitable fairness regardless of their ability to pay for legal representation. It is the responsibility of the government to guarantee that everyone is protected in the same manner, regardless of the implications that this may have for the government. Article 8 establishes the right to seek remedies before the national tribunal in cases of fundamental rights violations. According to Article 10, “every individual is entitled to a public and impartial trial by an unbiased and independent court to ascertain their rights”. It is essential to have legal representation at every hearing.

Although the Declaration does not possess legal enforceability, it does function as a morally obligatory commitment, a benchmark for global standards, and a guiding statement. It has had a substantial impact on the international legal aid movement.

#### **4.2 European Convention on Human Rights, 1950**

The “European Convention on Human Rights”, which was ratified in Rome on November 4, 1950, became legally enforceable across Europe on September 1, 1953. The provision of free legal assistance for those accused of a crime is specifically discussed in Article 6(3)(c) of the Convention. According to Article 6(3)(c), anyone accused of a criminal offense has the right to personally defend themselves or choose legal counsel. If the accused cannot afford legal representation, they are entitled to receive it for free when it is necessary for justice. The Convention ensures that individuals who are confronted with criminal accusations have the right to receive free legal aid.<sup>17</sup>

#### **4.3 Standard Minimum Rules for the Treatment of Prisoners, 1955**

Rule 93 guarantees certain rights to a person who is being held in custody before their trial. These rights include the entitlement to get legal representation

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<sup>17</sup> Nina H. B. Jorgen, The Right of the Accused to Self-Representation before International Criminal Tribunals, 98(4) THE AMERICAN JOURNAL OF INTERNATIONAL LAW 711-726 (2004).



without charge, the opportunity for their lawyer to see them to assist in their defence preparation, and the chance to provide confidential instructions to their legal counsel.

#### **4.4 United Nations Conference, 1965**

The third “United Nations Conference on Crime Prevention and Treatment” took place in Stockholm in 1965. The Conference acknowledges the significance of having the ability to get legal counsel.<sup>18</sup> The conversation mostly revolved around determining the most effective means of offering legal counsel to those who have been found guilty of a criminal offense. Everyone present recognized the need to obtain legal counsel for persons who have been arrested, charged, or convicted. Access to legal counsel is both a basic human right and a protection against unfairness when there is inadequate legal representation.

#### **4.5 The International Covenant on Civil and Political Rights (ICCPR), 1966**

The ICCPR is a primary document that outlines nations’ explicit responsibilities to provide low-income individuals with state-funded legal representation. Article 14(3)(d) of the ICCPR

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<sup>18</sup> Anil Kumar Sharma & Aradhana Parmar, *Concept of free legal Aid and International Laws*, 18(7) JOURNAL OF ADVANCES AND SCHOLARLY RESEARCHES IN ALLIED EDUCATION 279-285 (2021).

guarantees an accused the right to legal representation. This right is granted without any cost if the accused cannot afford to pay. The inclusion of this right is one of the essential rights that every individual is entitled to, without any discrimination, while facing any criminal charge. International law allows for a reasonable restriction on the provision of legal assistance, stating that states are obligated to offer legal help only when it is deemed necessary for the sake of justice.

The Human Rights Committee, established by the ICCPR, developed legal precedents throughout time that deal with many concerns, including the extent and manner of legal counsel. The Committee does not consider its responsibility as an assessor of a state's conformity with the ICCPR regarding its comprehensive legal assistance plan. However, it has expressed the view that legal counsels should be appropriately compensated for giving assistance under a legal assistance plan.

Several decisions made by the Committee expand the scope of a few provisions outlined in Article 14(3). For example, individuals accused of a criminal charge can choose their legal representation. The state may appoint legal counsel in situations when the individual is unable to afford it. The Committee has determined that while the state may not be obligated to provide the option to choose legal representation in certain instances, the appointed counsel must

possess the necessary skills and expertise and must operate autonomously from state authority. The Committee has prioritized examining how the management of the legal aid program might potentially violate counsels' right to represent their clients, rather than focusing on the matter of choosing legal counsel.

#### **4.6 Convention on International Access to Justice, 1980**

Article 1, states that everyone residing regularly in a contracting state, regardless of their nationality, is entitled to equal access to legal counsel in civil matters just like a resident of that state. Article 11 clearly states that a party is not obligated to pay any expenses related to the filing, review, or determination of legal assistance.

#### **4.7 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988**

Under Article 17(2), a detainee is allowed to the appointment of legal representative by a court or another authorized body, without being required to bear the costs associated with legal representation.

#### **4.8 The Convention on the Rights of the Child, 1989**

It is widely acknowledged that children must get different treatment than adults when they are charged or found guilty of criminal behaviour. In regards to children accused of a crime, the Convention stipulates that states are obligated to ensure that any child who is deprived of their freedom is entitled to speedy access to legal and appropriate assistance.<sup>19</sup>

#### **4.9 International Court of Justice Trust Fund, 1989**

During the hearings of disputes by the “International Court of Justice”, individual states get legal assistance. The “International Court of Justice Secretary-Trust General’s Fund” was created by the General Assembly on November 1, 1989, titled “Report of the International Court of Justice.” Its purpose is to assist governments in settling their disputes via the court. The trust concept was established to aid governments in overcoming financial obstacles that prevent them from submitting their issues to the ICJ for adjudication.

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<sup>19</sup>Anuradha Palanichamy, *Child Rights, Poverty and Protection*, 1(1) JOURNAL ON RIGHTS OF THE CHILD 1-18 (2016).

#### **4.10 Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991**

Principle 18 outlines that the individual bringing a complaint or appeal has the right to choose and choose a legal representative. If the patient is unable to afford legal representation, they should be given pro bono counsel.

#### **4.11 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1999**

Article 18(3)(d) ensures that migrant workers who are accused of criminal charges are entitled to get legal representation at the expense of the state.

#### **4.12 Council of Europe Convention on Action Against Trafficking in Human Beings, 2005**

Every state that has ratified it is required to provide victims the entitlement to legal representation and free legal aid, in compliance with their laws on compensation and remedies under the law.

#### **4.13 Other Relevant International Standards**

Additional international agreements that pertain to an individual's ability to obtain legal representation funded by the government include the "United Nations Basic Principles on the Role of Lawyers". These principles assert that the government must

ensure adequate financial support and resources for legal services for individuals who are economically disadvantaged or face other disadvantages.

The “United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment” states that a person in custody has the right to get legal counsel in situations where it is necessary for the interests of justice, and at no cost.

The “United Nations Standard Minimum Rules for the Administration of Juvenile Justice” provides that juveniles have the right to be associated with a counsel or to request free legal assistance for court procedures.

Moreover, the “United Nations Sustainable Development Goals” (SDGs) emphasize the importance of access to justice and the rule of law as essential components of sustainable development. Goal 16 specifically focuses on the promotion of peaceful and inclusive communities, ensuring access to justice for all, and establishing effective, responsible, and inclusive institutions at all levels.<sup>20</sup>

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<sup>20</sup> K. P. Singh, *Restorative Justice: A Concept for Complete Justice*, 17 JOURNAL OF THE NATIONAL HUMAN RIGHTS COMMISSION INDIA 121-146 (2018).

### **3. Implication of Other Rights on Legal Aid**

These international agreements provide additional rights such as free legal aid funded by the government and ensuring fair and equitable judicial processes. These rights, which include the essential elements of a legitimate legal framework, enable a wider understanding of the need for states to give free legal assistance.

#### **5.1 The Principle of the Rule of Law**

The members of the United Nations unanimously adopted the UDHR in 1948, recognizing the linkage between the rule of law with human rights. One normative rationale for legal assistance is the state's rule of law commitment. This rule says that a state must follow predetermined rules in all its acts. These guidelines allow individuals to predict how the state will employ compulsion in particular situations. An individual's inability to access free legal assistance would render the "rule of law's" protection meaningless. In light of this, it is necessary for individuals to not only possess an understanding of the law but also have access to it without difficulty. Some say it requires states to give services for individuals to learn and access the law. Article 44 of the "Charter of the Organization of American States" asserts that individuals can only achieve their aspirations within a fair social system provided the Member States offer sufficient legal aid to protect

their rights.<sup>21</sup> Legal assistance in securing rights applies to civil and criminal law cases for effective remedies to guarantee human rights.

## **5.2 The Right to Fair Hearing**

Article 14 of the ICCPR guarantees the “right to a fair hearing for criminal cases and rights and responsibilities in an action of law”. Article 6(1) of the “European Convention” ensures the entitlement to a fair and impartial hearing in both civil and criminal cases. Similar to the ICCPR, the European Convention expressly addresses legal assistance when outlining the minimal protections in criminal proceedings.<sup>22</sup> In the case of *Airey v. Ireland*,<sup>23</sup> the European Court made an explicit assertion on the government’s affirmative duty to ensure that lower-income individuals have equal opportunities to access the judicial system. The court underlined that the European Convention’s assurance of a fair trial in civil disputes does not mandate governments to provide pro bono legal assistance to needy individuals in every legal circumstance. The states can comply with the Convention by creating or maintaining forums that are sufficiently

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<sup>21</sup> *Supra* note. 17.

<sup>22</sup> Croquet & A.J. Nicolas, The International Criminal Court and the Treatment of Defence Rights: A Mirror of the European Court of Human Rights’ Jurisprudence? 11(1) HUMAN RIGHTS LAW REVIEW 91-131 (2011).

<sup>23</sup> 1980 2 EHRR 305.



uncomplicated in both process and legal content to enable individuals to receive a fair hearing without the need for legal representation.

### **5.3 The Right to Equality**

Equal rights, equal protection, and equal benefits under the law are all outlined in Articles 26 and 14 of the ICCPR. These principles address the consequences and advantages arising from the implementation of the law.<sup>24</sup> For these rights to have a meaningful impact, individuals must be allowed to get legal representation, when necessary, therefore ensuring their access to the justice system. The primary goal of legal assistance has always been to achieve equality.

### **5.4 The Right to an Effective Remedy**

Article 25 of the UDHR establishes the rights of all individuals to a satisfactory level of living that ensures their own and their family's well-being, including provisions such as food, attire, shelter, healthcare, and essential welfare services. However, some argue that individuals who need help with their legal issues are mostly concerned with violations of their economic rights.<sup>25</sup> This means that getting justice would not help them if they did not have an effective remedy available to them.

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

#### **4. Failures of the Formal International Instruments**

Even though the right to legal assistance is affirmed under international law, many individuals face significant challenges when trying to seek justice. Economic disparities often leave individuals unable to afford legal representation, leading to a lack of meaningful access to the legal system.

The aforementioned international instruments uphold the conventional concept of legal assistance, specifically emphasizing its use in criminal law cases, including representation and counsel throughout court proceedings. The explicit mention of legal assistance in criminal cases emphasizes the need to have legal representation to guarantee a fair trial. If someone's ability to pay prevented them from accessing legal representation, the right to counsel would be meaningless.

Some critics often point out deficiencies mentioned in the ICCPR in the context of the right to legal assistance. One such shortcoming is the Covenant's failure to specifically address the right to provide free aid in civil matters. Another shortcoming is that it excessively focuses on trials, neglecting to recognize the need for equitable justice.<sup>26</sup>

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<sup>26</sup> David Kaye, *State Execution of the International Covenant on Civil and Political Rights*, 3(1) UC IRVINE LAW REVIEW 101-125 (2013).

In addition, the international rules lack explicit provisions on ensuring the provision of legal assistance. The first “United Nations Conference on Human Rights in Teheran in 1968” only briefly touched upon the topic of developing comprehensive legal assistance programs. The resolution on legal aid urged Member States to ensure the gradual establishment of comprehensive legal aid systems, which would include creating criteria for providing legal help and streamlining processes to alleviate the financial constraints faced by those seeking legal remedies. This resolution acknowledges that providing legal help to those in need will enhance the safeguarding of human rights, however, it does not impose enforceable legal responsibilities. The United Nations has not adequately followed up on the progress achieved by nations in establishing comprehensive legal assistance programs.<sup>27</sup>

Another significant obstacle to guaranteeing equitable justice, especially for the needy, is the inadequate performance of the formal legal system in numerous countries. This is due to various factors, for instance excessive adherence to legal formalities, lengthy and costly litigation processes, lack of trust in the legal system and its complex procedures and institutions, dislike towards lawyers and courts due

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<sup>27</sup> Tolbert et. al., United Nations reform and supporting the rule of law in post-conflict societies, 19 HARVARD HUMAN RIGHTS JOURNAL 29 (2006).

to their imposing and authoritative nature, and the limited reach of the legal aid system.<sup>28</sup> The presence of these institutional barriers presents considerable obstacles in achieving the goal of justice for those who are economically and socially marginalized. Although the legal aid programme covers expenses such as court fees, legal counsel, and obtaining certified copies, it does not include any potential payments given to court officials for minor favors, or transportation costs to the court. Due to their perception that the legal system is designed to suppress and weaken them, they must come up with strategies to evade it instead of actively participating in it. Consequently, the economically disadvantaged population tends to see the legal procedure as an inconvenience leading to permanent outcomes, an unwelcome problem that must be eliminated. It has no significance for them as a means of gaining power and ensuring their existence. In the absence of significant structural changes, legal aid's efforts to encourage individuals to participate in the system, no matter how encouraging the outcomes may seem, will eventually be met with suspicion. This partially elucidates the reason why, in several nations, individuals with low socioeconomic status resort to the parallel system as a means of seeking resolution for their complaints.

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<sup>28</sup> *Id.*

## **5. Way Forward**

Free legal aid is not only a matter of domestic policy but also a crucial component of international obligations. From an international law perspective, providing legal assistance is not just a desirable option but a fundamental imperative in ensuring that justice is truly accessible to all, irrespective of economic means. When it comes to meeting their responsibilities under international law and working towards a more equitable world, states and the international community should make free legal assistance a top priority.

Providing free legal aid is essential for addressing systemic inequalities and ensuring that individuals have the opportunity to assert their rights and seek redress for injustices. In addition to addressing individual legal needs, free legal aid also serves broader societal interests. It contributes to promoting social justice, combating discrimination, and challenging systemic inequalities. Free legal aid has the potential to tackle the underlying causes of poverty and promote sustainable development by enabling people to exercise their rights and ensure authorities are held responsible.

Many countries lack adequate mechanisms for providing free legal aid, and those that do often face resource constraints and capacity limitations. As a result, a significant number of individuals worldwide continue to be denied access to justice due to their

socio-economic status. Furthermore, there are also structural barriers that hinder the effectiveness of free legal aid programs. These include inadequate awareness about legal rights, cultural barriers, and lack of trust in the justice delivery system. To tackle these issues, a comprehensive strategy is needed that encompasses not just the provision of legal aid, but also the empowerment of communities, raising awareness about legal rights, and the establishment of confidence in the justice system.

## Chapter - 4

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# UNETHICAL LEGAL PRACTICES: IMPEDIMENTS TO THE EFFICACY OF LEGAL SERVICE AUTHORITIES

Shuma Talukdar\*

### Abstract

This study investigates the pervasive issue of unethical legal practices by lawyers in India and its detrimental effects on the success and functionality of Legal Service Authorities (LSAs) in the country. Through a comprehensive examination of case studies and legal analyses, the study aims to shed light on the prevalence of unethical behaviour within the legal profession and its direct impact on the objectives of LSAs.

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The study delves into specific instances of misconduct, such as corruption, dishonesty, and exploitation of clients, to highlight the challenges these practices pose to the principles of justice and equitable legal representation. By exploring the repercussions of unethical conduct on the effectiveness of legal service delivery, the study seeks to underscore the importance of maintaining ethical standards within the legal profession to uphold the integrity of LSAs.

Furthermore, the study proposes practical solutions and recommendations to address and mitigate unethical legal practices. It aspires to contribute valuable insights that can inform regulatory changes, foster ethical awareness within the legal community, and strengthen the mechanisms through which LSAs operate. Ultimately, the study endeavours to facilitate a more ethical and efficient legal landscape in India by addressing the obstacles posed by unethical legal practices to the success of Legal Service Authorities.

**Keywords:** Unethical legal practice, legal service authorities, corruption, dishonesty, exploitation of clients, India.



## I. INTRODUCTION

### a. Background and context of legal service authorities in India

The Legal Services Authorities Act, enacted by the Indian Parliament in 1987 and enforced on 9 November 1995, aimed to establish a uniform and extensive network for delivering proficient legal services to the less privileged segments of society, ensuring equal opportunities for all.<sup>1</sup> This legislative initiative was a response to the historical ramifications of British colonization in India, which had substantially reshaped the country's administrative, legal, and economic frameworks.<sup>2</sup> The adoption of the adversarial system, characterized by its intricacies, compelled the judiciary to introduce measures for the just and equitable resolution of legal matters. In the case of *M.H. Hoskot v. State of Maharashtra*, the Supreme Court emphasized the necessity of incorporating a provision for free legal aid into the Indian constitution due to the procedural complexities in court proceedings and the prevalence of legal fees, particularly in light of the technical nature of the law.<sup>3</sup>

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<sup>1</sup> Legal Services Authorities Act, 1987.

<sup>2</sup> Neelu Mehra et al., 'India' (*Global Access to Justice*, n.d.) <https://globalaccesstojustice.com/global-overview-india/> accessed 24 November 2023.

<sup>3</sup> AIR 1978 SCC 1548, (1978) 3 SCC 544.

Additionally, the 42nd amendment act played a pivotal role in this regard by introducing Article 39A, nestled within the directive principles of state policy, thereby mandating the provision of free and competent legal services to the disadvantaged sections of society.<sup>4</sup> This constitutional provision ensures the equitable dispensation of justice to every citizen, irrespective of their economic and social standing. The implementation of the Legal Services Authorities Act 1987 further operationalizes these principles by establishing statutory legal services authorities at the National, State, and District levels. These authorities play a crucial role in offering free legal aid to individuals who lack the financial means to bear the costs associated with legal proceedings, thereby fostering a more inclusive and accessible legal system.

## **b. Overview of the legal profession and its ethical standards**

Misconduct under the Advocates Act, 1961, is characterized as behavior that brings disgrace or dishonor upon an advocate, without a specific definition but employing the term “unprofessional

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<sup>4</sup> Ratala Bala Bhargavi, *‘The Legal Aid and Advice (Amendment) Bill 2015 & 2017: Is it a Good Idea?’* (JURIS CENTRE, 25 May 2023) <https://juriscentre.com/2023/05/25/the-legal-aid-and-advice-amendment-bill-2015-2017-is-it-a-good-idea/> accessed 24 November 2023.

conduct.”<sup>5</sup> Section 35 of the Act specifically addresses professional misconduct.<sup>6</sup> Broadly, professional misconduct encompasses corruption, dishonesty, and exploitation of clients. Corruption, involving dishonest or fraudulent conduct, is deemed a serious breach of professional ethics when practiced by legal professionals. Dishonesty within the legal realm can manifest in various ways, including lying to clients, courts, or withholding information, constituting a violation of professional standards. Exploitation of clients, involving overcharging, coercive tactics, or taking advantage of clients’ legal ignorance, is also considered a form of professional misconduct.<sup>7</sup>

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<sup>5</sup> Smega Sony, ‘*Professional Misconduct by Advocates in India: A Critical Study*’, DE JURE NEXUS LAW JOURNAL, 2020. <https://dejurenexus.com/wp-content/uploads/2021/01/PROFESSIONAL-MISCONDUCT-BY-ADVOCATES-IN-INDIA-By-Smega-Sony-1.pdf> accessed 24 November 2023.

<sup>6</sup> Section 35 – Punishment of advocates for misconduct.

<sup>7</sup> Advocatanmoy Law Library, ‘*Standards of Professional Conduct and Etiquette of Indian Lawyers*’, ADVOCATANMOY, 23 March 2020. <https://advocatanmoy.com/2020/03/23/standards-of-professional-conduct-and-etiquette-of-indian-lawyers/> accessed 23 November 2023.

## II. PREVALENCE AND NATURE OF UNETHICAL PRACTICES

### a. Case studies illustrating instances of unethical conduct

Fig.1 Case laws of professional misconduct

Name	Fact/ Court Observation	Remarks
R.K. Anand v. Delhi High Court (2009) 8 SCC 106, (2010) 2 SCC (Cri) 563	Instances of advocates accepting money in a judge's name, tampering with records, and engaging in fraudulent court practices pose a real threat to the integrity of court proceedings. In such cases, the court is not only entitled but obligated to protect itself and preserve the purity of its proceedings.	It is the duty of the Advocate to protect the dignity of court and not to scandalise it.

<p>P.D Gupta v. Ram Murti and another (1997) 7 SCC 147</p>	<p>While the pendency of suit of injunction, the appellant's advocate, acquired the contested property from appellant and subsequently sold it to a third party, thereby generating profit for both the appellant and himself.</p>	<p>The advocate is found to be guilty of professional misconduct by the Hon'ble Supreme Court.</p>
<p>Surendra Nath Mittal v. Daya Nand Swaroop BCI Tr.Case No. 63/1987</p>	<p>The advocate manipulated the judgment by including "<i>maisoood</i>" with interest.</p>	<p>He is found in violation of Rule 1 and 2 of BCI Chapter II.</p>
<p>Narain Pandey v. Pannalal Pandey (2013) 11 SCC 435</p>	<p>An advocate found guilty of filing unauthorized vakalatnama and subsequently a false compromise on behalf of a client should receive a</p>	<p>The court, in making this determination, considered the principles outlined in the Preamble of the BCI Rules- Chapter II.</p>

	<p>punishment commensurate with the severity of the misconduct, aiming to deter future wrongdoing and correct the advocate's behaviour.</p>	
<p>P.D Khandakar v. Bar Council of Maharashtra 1984 2 SCC 556</p>	<p>The court stated the difference between giving improper legal advice and wrong legal advice. Professional misconduct is not mere negligence but it should also be accompanied by moral delinquency.</p>	<p>Wrongdoing should be sustained by moral delinquency to constitute professional misconduct.</p>
<p>Noratanmal Chaurasia v. M.R. Murli (2004) 5 SCC 689</p>	<p>The advocate in this case kicked the complainant, threatened him and asked him not to carry the case.</p>	<p>The court found that "misconduct" in the context of the Advocates Act 1966 encompasses</p>

		both intentional and unintentional wrongful actions and omissions, constituting a breach of discipline.
Prof. Krishanraj Goswami v. The Reserve Bank of India (2007) Bom CR 565	The advocate intentionally and knowingly violated bar council rules, causing undue delay in filing the suit, which ultimately led to the client's losses.	The advocate's misconduct was deemed responsible for bringing disgrace to the client.
Smt Sudesh Rani v. Munish Chandra Goel (2002) SC 427	The advocate filed an eviction suit against tenants while suppressing the fact of a prior compromise decree that declared the tenants as owners of the property.	Advocate was found guilty of professional misconduct.

Sambhu Ram Yadav v. Hanuman Das Khatry (2001) SC 2509	The advocate stated to his client that the judge is soliciting bribes for giving a favorable court order.	The advocate is found to be unfit to be a lawyer by the Hon'ble Supreme Court and his act is declared as professional misconduct under Rule 3 and 4 of BCI – Chapter II.
Smt. Siya Bai v. Sita Ram BCI Tr. CaseNo.8/1987 and In Re: An Advocate v. Unknown AIR 1961 Ker 209	In both the cases the advocates withdrew the decretal amount but did not hand it over to the client.	The advocates are found to be in violence of professional ethics under Rule 27 of the BCI Rules.
John D'souza v. Edward Ani 1994 SCC (2) 64	Despite serving two letters of demand the advocate did not hand over the will he executed.	Found guilty under Rule 15 of BCI Chapter II.

Source: processed by author (2023)

### **b. Identification of patterns and trends**

Merely being negligent does not qualify as professional misconduct; the presence of moral



wrongdoing is essential to constitute the offense.<sup>8</sup> This guiding principle is observed in numerous subsequent cases of professional misconduct within the legal profession.<sup>9</sup> Proving the absence of moral wrongdoing in a given action can be challenging in practice, leading to a considerable number of unresolved cases related to professional ethics. Consequently, this situation contributes to bolstering the confidence of unethical legal practitioners.

The examination of the aforementioned cases underscores the importance of providing a precise definition of “misconduct” within the Advocate’s Act. This lack of specificity makes it challenging to comprehensively enumerate all instances of misconduct and indiscipline. Nevertheless, the term implies a breach of established norms in legal practice, which should encompass moral values. The absence of these moral principles not only poses an obstacle to justice but also undermines the goals of legal service authorities.

The most prevalent form of professional misconduct can be summarized based on Fig. 1 are corruption, such as obtaining money to conceal facts or evidence for the opposing party, or causing delays in proceedings. Dishonesty, such as the non-disclosure

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<sup>8</sup> A Vakil, Re1 Coutts Trotter, CJ.

<sup>9</sup> Central Bureau of Hyderabad v. K.Narayan Rao (2012) 9 SCC 512.

of material facts before the court, and the exploitation of clients, including the misappropriation of clients' funds or decretal amounts, are also common unethical practices among advocates. Engaging in such behaviour not only disrupts the entire judicial system but also raises concerns about the integrity of the judiciary, eroding the trust of the general public in the justice system upon which legal service authorities are built.

A prevalent trend is the occurrence of unethical practices, particularly noticeable in the courts of smaller towns where cases are initially developed. Mishandling cases at this lower level has the potential to significantly disrupt the entire legal process, leading to prolonged delays in achieving justice. The root cause of such unethical conduct can be attributed to the substandard quality of legal education provided by many law schools. The unchecked proliferation of law schools driven by profit motives results in the production of lawyers akin to factory products, lacking moral values and a true understanding of the legal profession's objectives. To address this issue, it is crucial to focus on enhancing the quality of education and curbing the unrestrained expansion of law colleges. Emphasizing the cultivation of moral values should take precedence over merely imparting rules and regulations, with a strong emphasis on building ethical consciousness.

### **III. IMPACT ON LEGAL SERVICE AUTHORITIES**

#### **a. Analysis of how unethical practices hinder the goals of LSAs**

Unethical conduct by lawyers presents a significant obstacle to the success of the Legal Services Authority in India, compromising the integrity of the legal profession, which is traditionally regarded as noble. Advocates are entrusted with the responsibility of serving as exemplars for society, and any deviation from ethical standards can cast a shadow over the credibility and standing of the profession. Professional misconduct, encompassing actions that deviate from accepted norms, poses a threat to the reputation of the legal community. Such transgressions may include breaches of client trust and involvement in corrupt practices, thereby undermining the fundamental principles upon which the legal profession rests.

#### **b. Exploration of the challenges faced by LSAs in addressing unethical conduct**

Despite its noble objectives to provide free legal services to marginalized sections of society and facilitate amicable dispute resolution, the authority faces significant challenges that impede its effectiveness. One major hurdle is poor financial management, potentially resulting in inefficient allocation and utilization of funds, thereby adversely affecting the quality and reach of legal services.

Another obstacle is the lack of robust performance monitoring, hindering the identification of weaknesses and the implementation of necessary improvements. Additionally, the absence of tools to measure customer satisfaction further complicates the assessment of whether the services meet the needs of the people and where enhancements are required.

Furthermore, accessibility and awareness pose notable challenges. While the Legal Services Authority is designed to assist illiterate, impoverished, and physically challenged individuals who face barriers to accessing courts due to their lack of legal knowledge or financial constraints, issues persist regarding the awareness and accessibility of these services among the intended beneficiaries. Addressing these multifaceted challenges demands comprehensive solutions, encompassing regulatory reforms, increased financial support, and enhanced awareness campaigns, among other measures. It is crucial to recognize the intricate nature of these issues and work towards systemic improvements to enhance the performance of the Legal Services Authority in India.

#### IV. ANALYSIS OF EXISTING MECHANISMS

##### a. Overview of the current regulatory mechanisms for addressing unethical conduct

The Advocates Act of 1961 and the Indian Bar Council have established mechanisms to address instances of professional misconduct, emphasizing the importance of maintaining ethical standards within the legal domain.<sup>10</sup> Additionally, the Supreme Court is also entitled to overlook the issue. In a case recognizing the importance of regulating the legal profession, the Supreme Court of India has urged the government to enact a law capping lawyers' fees.<sup>11</sup> This initiative aims to ensure access to legal services, a crucial element of the justice system as mandated under Article 39A of the Constitution.<sup>12</sup> Despite these efforts, ongoing discussions persist regarding the efficacy of existing regulatory mechanisms, prompting considerations for further reforms and strengthened enforcement measures.

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<sup>10</sup> BCI, 'Rules on professional standard' (Bar Council of India, n.d.) <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/> accessed 24 November 2023.

<sup>11</sup> Amit Anand Choudhary, *SC asks Centre to bring law to regulate legal profession, cap lawyer's fee*, (*Times of India*, 6 December 2017), <https://timesofindia.indiatimes.com/india/sc-asks-centre-to-bring-law-to-regulate-legal-profession-cap-lawyers-fees/articleshow/61939343.cms> accessed 24 November 2023.

<sup>12</sup> *Id.*

## **b. Evaluation of the effectiveness of these mechanisms**

The efficacy of regulatory mechanisms governing lawyers in India has sparked considerable debate, with the Advocates Act of 1961 serving as the foundational framework for overseeing lawyers' conduct. Despite this legal foundation, apprehensions persist regarding its effectiveness. One notable concern raised by the Supreme Court of India revolves around the absence of a robust law specifically addressing the regularization of fees and the provision of public sector services to the most vulnerable litigants, either free of charge or at standardized rates.<sup>13</sup> Furthermore, the mechanisms in place to address violations of professional ethics appear to lack the necessary fortification.<sup>14</sup>

Complicating matters, the existing regulatory frameworks are susceptible to manipulation by influential interest groups, enabling them to exploit the system to their advantage. This intricate landscape underscores the inherent complexities and the imbalances in bargaining power among diverse interest groups. Consequently, these power differentials contribute to an uneven influence over

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<sup>13</sup> *Id.*

<sup>14</sup> *Practicing as a Lawyer in India*, HELPLINE LAW, 22 July 2022). <https://www.helplinelaw.com/govt-agencies-and-taxation/PRACLI/practicing-as-a-lawyer-in-india.html> accessed 24 November 2023.

regulatory rules and norms, ultimately shaping the outcomes. Thus, although regulatory mechanisms exist to tackle unethical conduct by lawyers in India, their effectiveness remains variable, prompting ongoing discussions regarding the imperative for additional reforms and strengthened enforcement measures.<sup>15</sup>

The efficacy of regulatory measures also gets limited, particularly when misconduct is pervasive or not promptly reported. Beyond the immediate consequences for individual lawyers, these unethical practices have far-reaching implications, eroding public trust in the legal system. This erosion of trust not only jeopardizes the reputation of the legal profession but also complicates the fulfilment of the Legal Services Authority's mission to provide free legal services to marginalized sections of society. Consequently, the imperative to address and rectify professional misconduct becomes paramount for the continued success of the Legal Services Authority in India.

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<sup>15</sup> Shivaraj Huchhanavar, 'Regulatory Mechanisms Combating Judicial Corruption and Misconduct in India: A Critical Analysis' LAW AND OTHER THINGS, 10 August (2020). <https://lawandotherthings.com/regulatory-mechanisms-combating-judicial-corruption-and-misconduct-in-india-a-critical-analysis/> accessed 24 November 2023.

**c. Identification of gaps and limitations in the regulatory framework**

The current regulatory framework in India reveals several gaps that may impede the effective addressing of unethical conduct among lawyers. One notable deficiency lies in the absence of comprehensive rules. Although the Bar Council of India has established rules pertaining to professional standards for advocates, these regulations fall short in encompassing all potential scenarios of unethical behaviour. This gap underscores the necessity for a more exhaustive set of rules that can comprehensively guide lawyers in maintaining ethical practices.

Another significant issue is the inadequate enforcement of existing rules. Even when regulatory guidelines are in place, challenges arise in their enforcement, often stemming from resource constraints, corruption, or systemic shortcomings. This raises concerns about the efficacy of the regulatory framework in holding lawyers accountable for ethical lapses. Additionally, factors such as the growing commercialization and specialization within the legal profession contribute to the erosion of ethical considerations, resulting in lawyers exhibiting “inferior judgment capacities, a narrower range of moral sensibilities, and a reduced personal



commitment to moral behaviour.”<sup>16</sup> Moreover, the homogeneity in lawyers’ moral reasoning compared to the general public could lead to a lack of diverse perspectives when addressing ethical dilemmas.<sup>17</sup> Furthermore, the pervasive lack of public trust in the legal profession exacerbates these challenges, making it more arduous for regulatory bodies to effectively address instances of unethical conduct.<sup>18</sup> In light of these gaps, there is a pressing need for comprehensive reforms and enhanced enforcement mechanisms within the regulatory frameworks governing lawyers in India.

## **V. STRATEGIES FOR ETHICAL ENHANCEMENT**

### **a. Proposal of proactive measures to foster ethical behaviour among lawyers**

The ethical enhancement of lawyers in India can be pursued through several key strategies. First and foremost, there should be a strict adherence to the professional ethics outlined by the Bar Council of India, encompassing principles such as refraining

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<sup>16</sup> Ipshita Sengupta, ‘Nurturing Caring Lawyers: Rethinking Professional Ethics and Responsibility in India’ (Manupatra, n.d.) <https://docs.manupatra.in/newsline/articles/Upload/E45CD C05-BF94-46F6-A9A3-81424EE2DABD.pdf> accessed 24 November 2023.

<sup>17</sup> Susan Daicoff, ‘Lawyer, know thyself: A review of empirical research on attorney attributes bearing on professionalism’ Am. UL Rev. 46 (1996): 1337.

<sup>18</sup> *Supra* note 16.

from taking cases where the lawyer must act as a witness, avoiding withdrawal of services midway, prioritizing client needs, refraining from tampering with or suppressing evidence, and consistently following client instructions. Additionally, a focus on moral conduct is crucial, necessitating a deeper comprehension of professional ethics that extends beyond mere compliance with standards. This involves integrating personal emotions, feelings, and instincts into the decision-making process.<sup>19</sup> Furthermore, a re-evaluation of legal education is essential, moving beyond a narrow focus on rules and legalistic thinking to incorporate the relevance of social context, moral reasoning, and the fostering of care and connection between lawyers and clients.<sup>20</sup> Lawyers can contribute to ethical reconstruction by adopting an ethic of care, prioritizing community and care over individual autonomy.<sup>21</sup> Accountability should be strengthened, holding lawyers responsible for their actions and ensuring accountability to the court, fellow lawyers, and disputants.<sup>22</sup>

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<sup>19</sup> Thode, E. Wayne, *Ethical Standard for the Advocate.*, TEX. L. REV. 39 (1960): 575.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Sarthak Gupta, 'Professional ethics and accountability of lawyers', IPLEADERS, 9 January (2021) <https://blog.ipleaders.in/professional-ethics-accountability-lawyers/> accessed 24 November 2023.

The effective utilization of Information and Communication Technology (ICT) can also significantly improve the justice system. Frequently, clients are not required to physically attend court proceedings, with their legal representatives assuring them of managing the case on their behalf. Unfortunately, some advocates exploit the absence of clients as an opportunity for deception. Introducing mandatory real-time video broadcasts of court proceedings allows clients to closely monitor the case from anywhere globally. Each court can establish a system where all involved parties receive notifications of case dates, access documents submitted by advocates, attend proceedings through video links, receive copies of orders via registered email addresses, and access other pertinent documents. This approach also aids in detecting any attempt by a lawyer to withhold or selectively present documents. Only through complete transparency in the system can we effectively combat corruption and unethical practices. These multifaceted strategies collectively aim to elevate the ethical conduct of lawyers in India.

**b. Recommendations for collaboration between LSAs, bar associations, and legal institutions**

Collaboration among Legal Service Authorities (LSAs), bar associations, and legal institutions holds the potential to significantly elevate the ethical standards observed by lawyers in India. One effective

strategy involves the implementation of joint training programs and workshops on professional ethics. Through collaborative efforts, these entities can design and conduct comprehensive training sessions that enlighten lawyers about the paramount importance of ethical conduct in their profession. Such programs serve as a valuable platform for fostering a deeper understanding of ethical principles among legal practitioners.

Another avenue for collaborative enhancement involves the development of comprehensive guidelines addressing various scenarios of unethical conduct. By pooling their expertise, LSAs, bar associations, and legal institutions can create a robust set of guidelines. These guidelines serve as a practical reference, aiding lawyers in discerning what constitutes unethical behaviour and guiding them on the path to ethical practice. Together, these entities can form a unified front dedicated to instilling ethical values within the legal community.

Additionally, collaborative initiatives can include the promotion of pro bono work, the establishment of disciplinary committees, regular audits and reviews, and the encouragement of research and discussion on professional ethics. By jointly undertaking these measures, LSAs, bar associations, and legal institutions contribute collectively to the cultivation of a legal environment in India where ethical standards are not just upheld but continually

elevated. Through a united front, these entities play a pivotal role in shaping a legal landscape characterized by ethical practice and public service.

**c. Discussion on potential regulatory changes to strengthen ethical standards**

To enhance the ethical standards of legal practitioners in India, there exists a scope for regulatory adjustments across several dimensions. Firstly, a reconsideration of professional ethics is imperative, emphasizing a more profound comprehension among lawyers. This involves articulating a distinct perspective on professional responsibility that extends beyond the established standards of conduct and etiquette outlined by the Bar Council of India. By broadening the understanding of ethical obligations, lawyers can navigate their professional roles with a heightened sense of responsibility.

Secondly, it is crucial to embed lawyers' professional relationships and practices within a social context, integrating individual emotions, feelings, and instincts into their decision-making processes. This approach rejects the isolation of private morality from professional conduct, fostering a holistic perspective that acknowledges the interconnectedness of

personal values with the responsibilities inherent in the legal profession.<sup>23</sup>

Thirdly, the adoption of Carol Gilligan's ethic of care presents a transformative possibility for the legal profession in India. Prioritizing care and community over individual freedom and autonomy, this ethic provides a framework for lawyers to reimagine and reconstruct their roles in ways that align with ethical and responsible practices. This shift encourages a collective commitment to the well-being of both legal practitioners and the communities they serve.<sup>24</sup>

In addition to these conceptual shifts, practical measures such as strengthening accountability mechanisms are essential. Lawyers should be held accountable not only to the court but also to their peers and the parties involved in disputes. This accountability fosters a culture of responsibility within the legal community. Furthermore, regular audits and reviews of lawyers' work, conducted collaboratively by Legal Services Authorities (LSAs), bar associations, and legal institutions, can serve as a proactive means of identifying and rectifying any unethical practices. In combination, these proposed

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<sup>23</sup> Ann Juergens, *Practicing what we Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching*, 11 *CLINICAL L. REV.* 901 (2005).

<sup>24</sup> For details, *See*, Carol Gilligan, *Moral orientation and moral development*; in *Women and Moral Theory* 10 (Eva Fedder Kittay & Diana T. Meyers eds., 1987)

changes offer a comprehensive approach to fortifying the ethical conduct of lawyers in India.

## **VI. FINAL REMARKS**

Despite being a noble profession, the legal practice lost its glory primarily attributed to unethical practices by the legal professions. Corrupted practice, dishonesty, and exploitation of clients reflect the lack of moral values held by the lawyers. Along with collaboration between LSAs, bar associations, and legal institutions, a strict adherence to professional ethics outlined by the Bar Council of India should be prioritized. This includes refraining from taking cases where the lawyer must act as a witness, avoiding mid-service withdrawal, prioritizing client needs, refraining from tampering with evidence, and consistently following client instructions. Beyond mere compliance, a focus on moral conduct is crucial, requiring a deeper understanding of professional ethics that integrates personal emotions and instincts into decision-making. Legal education needs re-evaluation, moving beyond a narrow focus on rules to include social context, moral reasoning, and fostering care between lawyers and clients. Lawyers can contribute by adopting an ethic of care, prioritizing community over individual autonomy. Accountability should be strengthened, holding lawyers responsible for their actions and ensuring accountability to the court, fellow lawyers, and disputants. Finally, the effective

utilization of Information Technology and Communication (ITC) has the potential to enhance transparency, diminishing instances of corruption and unethical practice



## **Chapter - 5**

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# **LEGAL AID IN ASSAM: AN OVERVIEW OF THE LAW AND PRACTICE**

Kailash Jeenger\*

### **I. INTRODUCTION**

Assam is the largest state located in the North-East of India. Its population comprises people from different tribes, races and ethnicities. The availability of free legal aid services is crucial in Assam, given its geography, social composition, marginalization and more dependence on conventional occupation. Theoretically, it is advantageous for every citizen of India that free legal aid has been recognized as a fundamental right under Article 21 of the Indian Constitution.<sup>1</sup> To provide free legal aid is one of the Directive Principles of State Policy also.<sup>2</sup> It was inserted by way of an amendment to the Constitution of India in the year 1976.<sup>3</sup> Because of the deep-seated socio-economic disparities, every person does not get

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<sup>1</sup> Hussain Aara Khatoun v. Home Secretary, State of Bihar, A.I.R. 1979 S.C. 1360 (India).

<sup>2</sup> INDIA CONST. art. 39A.

<sup>3</sup> Constitution (Forty Second Amendment) Act, 1976, Acts of Parliament, 1976 (India).

equal opportunity to have access to the judicial system in order to get justice. In this regard, free legal aid provides a mechanism and an opportunity to have access to justice. It is necessary for equal justice.<sup>4</sup> In this way, free legal aid is implicit in the right to equality of opportunity too. The goal of equal protection of the laws under Article 14 cannot be realized without easy access to justice.

In addition to the Constitutional norms, the Parliament enacted in the year 1987, the National Legal Services Authorities Act. It provides for robust machinery at the state, district and sub-divisional (Taluk) level which is responsible for making available free legal services to the needy people. Similar mechanism had already been recommended by a High-Powered Committee constituted by the Union government.<sup>5</sup> States started implementing the provisions of the Act by establishing the authorities and committees provided for under the Act. Initially, the Government of Assam established a Legal Aid Committee at the High Court of Guwahati in the year 1987.<sup>6</sup> The Legal Aid Committee began its functioning under the leadership of the then Chief Justice Mr. P. C. Reddy. The High Court also held the first Lok Adalat in the year 1988. Importantly, it was the third High Court in India to have started

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<sup>4</sup> VR Krishna Iyer, *Constitutional Miscellany* 191 (2d ed. 2003).

<sup>5</sup> PN Bhagwati, *My Tryst with Justice* 93 (2013).

<sup>6</sup> *Brief History Since 1987*, <https://ghclsc.gov.in/history.html>.

convening Lok Adalat at that time.<sup>7</sup> It inspired the commencement of Lok Adalats at the district level as well. Considering the social composition of the state, socio-economic diversity and inequality, marginalization, and internal disturbances, the role of the Legal Aid Committee and Lok Adalats was critical as well as challenging. Despite all odds, the Legal Aid Committee of the Guwahati High Court reportedly helped in the disposal of more than 30,000 cases of civil as well as criminal nature in its initial ten years.<sup>8</sup> As mandated by the National Legal Services Authorities Act,<sup>9</sup> The High Court of Guwahati constituted in the year 2003 its Legal Services Committee.<sup>10</sup>

At present, the state of Assam is equipped with the required institutional machinery for giving effect to the objectives of the National Legal Services Authorities Act, 1987. The institutional set up exists at the state, district and Taluk level, as required by the Act.<sup>11</sup> The statutory framework of these bodies and their functioning is discussed below.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> National Legal Services Authority Act, 1987, § 8A, No. 39, Acts of Parliament, 1987 (India).

<sup>10</sup> Vide Notification No. ASLSA/135/2003/1393, (dated 5 November 2003).

<sup>11</sup> The Act, *supra* note 9, §§ 6-11B.

## II. ASSAM STATE LEGAL SERVICES AUTHORITY

The National Legal Services Authorities Act, 1987 provides for the establishment of a state-level Legal Services Authority.<sup>12</sup> For this purpose, the state governments may also make rules dealing with a variety of matters relating to the State Authority.<sup>13</sup> Therefore, the government of Assam framed the Assam State Legal Services Authority Rules, 1996. In accordance with the Act and Rules, the Assam government established the Assam State Legal Services Authority. The Authority is headed by the Chief Justice of the Guwahati High Court in the official capacity of Patron-in-Chief.<sup>14</sup> Besides a High Court judge as a member, the state government is at liberty to determine the number of other members.<sup>15</sup> Accordingly, the Assam Rules provide for a maximum of 15 members.<sup>16</sup> Out of the 15 members, seven are ex-officio members.<sup>17</sup> Additionally, the Rules also lay

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<sup>12</sup> *Id.*, § 6.

<sup>13</sup> *Id.*, § 28.

<sup>14</sup> *Id.*, § 6(2).

<sup>15</sup> *Id.*, § 6(2)(c).

<sup>16</sup> Assam State Legal Services Authority Rules, 1996, Rule 3(1).

<sup>17</sup> *Id.*, Rule 3(2): “(i) Advocate General of the State; (ii) The Secretary in the Department of Finance; (iii) The Secretary in the Department of legislative; (iv) The Director General of Police of the State; (v) Chairman, State Scheduled Castes and Scheduled Tribes Commission, and in case there is no such chairman, one person of repute who is Specially interested in the upliftment Scheduled Castes and Scheduled Tribes of the State to be nominated by the State Government, and (vi) Two

down the powers and duties of Member-Secretary of the State Authority.<sup>18</sup> Some of the crucial powers and functions include: providing free legal services, ensuring effective implementation of legal service schemes and programs, and few other powers and functions relating to administration, finance and management of the State Authority.<sup>19</sup> These functions of the Authority are, by and large, in agreement with the functions prescribed by the National Legal Services Authorities Act, 1987. Accordingly, the State Authorities in general provide free legal aid services to eligible persons, conduct Lok Adalats and organize strategic legal aid programs.<sup>20</sup>

Acting under the statutory mandate, the Assam State Legal Services Authority provides free legal aid services to a range of needy persons eligible under the Act. These persons include “a member of a Scheduled Caste or Scheduled Tribe; a victim of trafficking in human beings or *begar* as referred to in Article 23 of the Constitution; a woman or a child; a mentally ill or otherwise disabled person; a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; an industrial workman; a person in custody under

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Chairman of the District Authority, as may be nominated by the State Government, in consultation with the Chief Justice of the High Court.”

<sup>18</sup> *Id.*, Rule 4, read with the Act, *supra* note 9, § 6(3).

<sup>19</sup> *Id.*, Rule 4.

<sup>20</sup> The Act, *supra* note 9, § 7(2).

specified circumstances, or a person with an annual income below the specified limit.”<sup>21</sup> As far as providing free legal aid services to people with low income is concerned, the Authority has prescribed the ceiling of annual income of rupees three lakh.<sup>22</sup> Thus, a person earning annually below this limit is entitled to get free legal services from the State Authority. In order to provide the legal services, the Authority presently has 19 legal aid counsels.<sup>23</sup> In the month of August, 2024, the Authority has approved a panel of 22 lawyers for providing pro bono services on behalf of the Authority.<sup>24</sup> The Authority also conducts workshops, seminars and conferences frequently and it provides training to Para Legal Volunteers every year. The Authority regularly holds Lok Adalats according to its calendar.

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<sup>21</sup> *Id.*, §12.

<sup>22</sup> Vide Notification No. LGL.165/2018/7, (dated 28 December 2018).

<sup>23</sup> *List of Empanelled Advocates approved for Assam State Legal Services* Authority, [https://aslsa.assam.gov.in/sites/default/files/swf\\_utility\\_folder/departments/aslsa\\_medhassu\\_in\\_oid\\_4/menu/document/office\\_notification.pdf](https://aslsa.assam.gov.in/sites/default/files/swf_utility_folder/departments/aslsa_medhassu_in_oid_4/menu/document/office_notification.pdf).

<sup>24</sup> *List of Learned Advocates for Pro Bono Services for Assam State Legal Services* Authority (Aug. 13, 2024), <https://aslsa.assam.gov.in/documents-detail/notification-dated-13th-august-2024-regarding-list-of-learned-advocates-for-pro>.

### III. GUWAHATI HIGH COURT LEGAL SERVICES COMMITTEE

The present Patron-in-Chief of the Guwahati High Court Legal Services Committee is Justice Vijay Bishnoi, the Chief Justice of the Guwahati High Court.<sup>25</sup> The Committee has other members also. The total number of members and experience of the other members may be determined by the State Authority.<sup>26</sup> In this connection, the Assam State Legal Services Authority Regulations, 1998 provide that the Committee shall have not more than eleven members, including the Chairman.<sup>27</sup> The other ten members according to the Regulations are: a sitting judge of the High Court, the Advocate General of Assam, a member of Assam Administrative Tribunal, a member of Assam Board of Revenue, Secretary of Assam Legislative Department, Registrar General of Guwahati High Court, President of Guwahati High Court Bar Association and four other members nominated by the Chief Justice.<sup>28</sup> The criteria for nominating the other four members are: involvement in the upliftment of the weaker section of the society, including Scheduled Castes, Scheduled Tribes, women, Children, rural and

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<sup>25</sup> According to section 8A(2)(a) of the National Legal Services Authorities Act, 1987, a sitting judge of the High Court shall be the Chairman.

<sup>26</sup> The Act, *supra* note 9, § 8A(2)(b).

<sup>27</sup> Assam State Legal Services Authority Regulations, 1998, Reg. 7(1).

<sup>28</sup> *Id.*, Reg. 7(2)(3).

urban labor; eminent personality in the field of law; special interest in the implementation of the Legal Services Schemes, and affiliation with the State Legal Service or the State Judicial service.<sup>29</sup>

The National Legal Services Authorities Act, 1987 also empowers the State Authority to determine by enacting regulations the functions to be performed by the High Court Committee. Thus, according to the Regulations of 1998, the functions of the Committee are to implement and perform such policies and directions as may be issued by the State Authority; to provide legal services to persons who satisfy the criteria laid down under the Act and the rules, and to encourage the settlement of dispute by way of negotiation, arbitration or conciliations.<sup>30</sup>

In order to provide legal services, the High Court Committee has a panel of forty empaneled lawyers.<sup>31</sup> Their professional details are available at the Committee web portal for public information.<sup>32</sup> In the exercise of the prescribed functions, the Committee holds Lok Adalats frequently. According to the available data, during the period between 2015 and

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<sup>29</sup> *Id.*, Reg. 7(4).

<sup>30</sup> *Id.*, Reg. 9.

<sup>31</sup> List of all Panel Lawyers empanelled with Guwahati High Court Legal Services Committee, <https://ghclsc.gov.in/List%20of%20Panel%20Lawyers.pdf>.

<sup>32</sup> *Id.*



2018, the Committee conducted 17 Lok Adalats.<sup>33</sup> The number of cases referred to these Lok Adalats is 552 and those disposed of by them is 97.<sup>34</sup> The matters dealt with by them mainly related to motor accident claims, dishonour of cheques, employment and land acquisition. As per the available records, it also organized events, such as a Round Table Consultation on Implementation of the Provisions of the Mental Healthcare Act, 2017,<sup>35</sup> and a seminar on Socio-Economic Justice and Functional Transparency with Special Reference to National Rural Employment Guarantee Act, 2005 and Right to Information Act, 2005.<sup>36</sup>

#### **IV. DISTRICT AND TALUK LEGAL SERVICES BODIES**

The National Legal Services Authorities Act, 1987 also provides for the establishment of District Legal Services Authorities.<sup>37</sup> The Assam government has started constituting the District Authorities from the year 1988.<sup>38</sup> At present, there are 33 District

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<sup>33</sup> *Disposal Statement (Category Wise) Held in the Following Lok Adalats*, <https://ghclsc.gov.in/images/photos/lok-adalat/LADS08122018.pdf>.

<sup>34</sup> *Id.*

<sup>35</sup> For more, see <https://ghclsc.gov.in/Program.html>.

<sup>36</sup> *Id.*

<sup>37</sup> The Act, *supra* note 9, § 9.

<sup>38</sup> Vide Notification No. LGL. 176-94/pt-II/48, (dated 7 April 1988).

Authorities.<sup>39</sup> The District Judge is Chairman of the District Authority.<sup>40</sup> In Assam, a District Authority may have not more than eight members.<sup>41</sup> The District Authorities coordinate the activities of the Taluk Legal Services Committees and organize Lok Adalats.<sup>42</sup> At micro level, there are Taluk Legal Services Committees also, which are headed by the senior-most judicial officer.<sup>43</sup> Their functions include coordinating the activities of legal services in the Taluk and organizing Lok Adalats within the Taluk.<sup>44</sup> The working of the Taluk Committees came under scrutiny in 2019 when the registration process in the National Register of Citizens was started. Those who were left out of the Register needed legal aid, but were unable to access it because of their socio-economic status. While responding to a petition filed by an organization Citizens for Justice and Peace, the Assam State Legal Services Authority stated that out of 78 Taluks, only two Taluk Committees were functioning.<sup>45</sup> This is certainly a dismal situation, especially in such times. According to the information available at the web portal of the National Legal

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<sup>39</sup> *State Profile ASSAM*, <https://nalsa.gov.in/dashboard/AS>.

<sup>40</sup> The Act, *supra* note 9, § 9(2)(a).

<sup>41</sup> The Rules, *supra* note 16, Rule 10(1).

<sup>42</sup> The Act, *supra* note 9, § 10(2).

<sup>43</sup> *Id.*, § 11A(2)(a).

<sup>44</sup> *Id.*, § 11B.

<sup>45</sup> *CJP's Assam Legal Aid Petition: Guwahati HC asks Centre and State to Indicate Stand on Funding* (Nov. 23, 2021), <https://cjp.org.in/cjps-assam-legal-aid-petition-gauhati-hc-asks-centre-and-state-to-indicate-stand-on-funding/>.

Services Authorities, currently there are only three Taluk Committees in Assam.<sup>46</sup>

## **V. LOK ADALATS**

Lok Adalat offers an alternative strategy to the conventional litigation system. In principle, it provides an opportunity for conciliated settlements.<sup>47</sup> Organization of Lok Adalats is the statutory responsibility of all the bodies discussed hereinabove.<sup>48</sup> In the conduct of Lok Adalats, presence of judicial officers is mandatory.<sup>49</sup> For organizing Lok Adalats, a list of cases proposed to be settled through Lok Adalats is prepared.<sup>50</sup> Thereafter, a program is planned by the concerned Committee or Authority, as the case may be. The Regulations of 1998 provide for the composition of Lok Adalats at various levels. Accordingly, in addition to judicial officers, legal professionals and social workers also preside over Lok Adalats.<sup>51</sup> In principle, Lok Adalats are meant for speedy, cheaper and amicable settlement of disputes. They prefer compromise. Parties in Lok Adalats are not required to be represented through advocates.<sup>52</sup> It is optional. The

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<sup>46</sup> State Profile, *supra* note 39.

<sup>47</sup> NR Madhava Menon's Reflections on Legal and Judicial Education 35 (G Mohan Gopal ed., 2009)

<sup>48</sup> The Act, *supra* note 9, § 19.

<sup>49</sup> *Id.*, § 19(2)(a).

<sup>50</sup> The Regulations, *supra* note 27, Reg. 19(1).

<sup>51</sup> See *id.*, Reg. 21-23.

<sup>52</sup> *Id.*, Reg. 34(1).

final decision of a Lok Adalat takes the form of an award or an order.<sup>53</sup>

In Assam, Lok Adalats are regularly organized by the Authorities and Committees mentioned above. They entertain matters which are either pending before a court or directly brought before them. Annually, thousands of cases are settled through these people's courts.<sup>54</sup> During the COVID- 19 pandemic, Lok Adalats were organized in Assam in hybrid mode also in collaboration with the National Legal Services Authority.<sup>55</sup> From the year 2002, the Lok Adalat system has been institutionalized through an amendment in the National Legal Services Authorities Act, 1987. It provides for the establishment of Permanent Lok Adalats by the State Authority.<sup>56</sup> Mainly, the jurisdiction of the Permanent Lok Adalats extends to matters relating to public utility services, which include transport services, postal, telegraph or telephone services, supply of electricity and water, sanitation, hospitals and insurance.<sup>57</sup> In the exercise of this power, the Assam

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<sup>53</sup> *Id.*, Reg. 28 and the Act, *supra* note 9, § 21.

<sup>54</sup> State Profile, *supra* note 39.

<sup>55</sup> *In a first, Assam witnesses Virtual Lok Adalat* (July 18, 2021) <https://www.sentinelassam.com/cities/guwahati-city/in-a-first-assam-witnesses-virtual-lok-adalat-547087>.

<sup>56</sup> The Act, *supra* note 9, § 22B.

<sup>57</sup> *Id.*, §§ 22A(b), 22B (1).

State Legal Services Authority has established Permanent Lok Adalats in 21 districts.<sup>58</sup>

## **VI. ASSAM VICTIM COMPENSATION SCHEME**

The Assam State Legal Services Authority is also responsible for the implementation of the Assam Victim Compensation Scheme. The Assam Government formulated the Scheme in the year 2012 in accordance with section 357A<sup>59</sup> of the Code of Criminal Procedure, 1973. The Victim Compensation Fund constituted under the Scheme is to be operated by the Member Secretary of the Assam State Legal Services Authority.<sup>60</sup> The Authority is also responsible for maintaining the accounts of the Fund. Whenever any claim for the award of compensation comes before the State or District Authority, the authority verifies the contents of the claim, decides the amount of compensation and awards the same within two months of the application.<sup>61</sup> In case of denial of compensation by the District Authority, an appeal may be filed before the State Authority.<sup>62</sup> The compensation is awarded to the victim or victim's family members in case of

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<sup>58</sup> *Establishment of Permanent Lok Adalat*, <https://aslsa.assam.gov.in/documents-detail/establishment-of-permanent-lok-adalat>.

<sup>59</sup> Inserted by an amendment in the year 2009.

<sup>60</sup> Assam Victim Compensation Scheme, 2012, Clause 3(3), vide Notification No. PLA. 757/2010/123, (dated 18 October 2012.)

<sup>61</sup> *Id.*, Clause 5(1)(3).

<sup>62</sup> *Id.*, Clause 8.

commission of offences, such as murder, rape, sexual assault, acid attack, hurt, etc. In case of murder, for instance, the amount of compensation is rupees five lakh, and in case of an acid attack, a victim may get the compensation between three and eight lakhs, depending upon the injuries suffered.<sup>63</sup>

## VII. PREVENTIVE JUSTICE ALSO NECESSARY

Considering the main categories of persons who are eligible for free legal aid, such as members of Scheduled Castes and Tribes, women, workers, poor and even victims of disaster, it appears that they are by and large victims of the ancient hierarchical organization of society, unequal distribution of wealth, power structures and *man-made* disasters. The origin of caste-system and caste-based atrocities date back to the era before Christ when some of the Indian scriptures classified the society in four classes (*Varna*),<sup>64</sup> supported<sup>65</sup> the same and justified oppression of the lowest class (*Shudras*), who were later on identified as untouchables. As far as the tribal population is concerned, governments are not so serious about their progress consistent with preserving their cultural identity and ways of life. Similarly, the poor condition of women in the society is because of the

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<sup>63</sup> Schedule, vide Notification No. PLA. 524/2015/Pt/190(ECF-38361), (dated 1 February 2019).

<sup>64</sup> See RIG VEDA 10/90/12.

<sup>65</sup> For instance, MANUSMRITI, 10/129 and 2/36, and BHAGVADA GEETA 18/41.

ancient patriarchal social system,<sup>66</sup> which believes men to be superior to women. This belief validates discrimination and violence against women. Similarly, in the machine-age, the gap between the rich and the poor has widened. There is concentration of wealth and resources in a few hands. The labour gets only wages despite the fact that it is only through the hard work and skill of the labour that something is made out of raw material and the owner of the enterprise earns huge profits. In the modern era, many people become victims of so-called natural disasters. Several disasters occur because of industrialization-led climate change, deforestation and infrastructural projects (such as dams, mining and tunnels). Majority of the legal issues faced by these people are a result of these patterns of societal structures.

The legal aid system is a sort of distributive justice to such people and it enables them to approach courts in order to seek redressal of their disputes. While such a system is quite important, at the same time, the efforts of preventive justice, abolition of social hierarchies and upliftment of the deprived sections of people must also be strengthened so that the old and modern unequal social systems may be dismantled and a just and equal society may be created. It will

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<sup>66</sup> For instance, Manusmriti suggests that women cannot own property (see verse 8/416), and Bhagavata Purana informs that women should not listen to the recitation of Vedas (see verse 1/4/25).

not only reduce victimization of these groups on account of their social status, but also enable them to seek justice themselves.

### **VIII. CONCLUDING REMARKS**

The institutional set-up necessary for providing free legal services exists in Assam. The government of Assam has taken several steps in order to ensure the implementation of the National Legal Services Authorities Act, 1987 and the Rules and Regulations in collaboration with the National Legal Services Authority and non-governmental organizations. There are, however, certain impediments encountered by this mechanism, such as lack of awareness, dearth of dedicated empanelled advocates, a smaller number of Taluk Committees and the emphasis on quantitative output of legal services, instead of qualitative. These problems are generic in nature. Taking into account the social issues in Assam, like education, awareness, registration of citizens and crimes against women, the legal aid system needs to be improved, especially at the Taluk level. The Taluk Committees need to be established at every sub-division. Through camps and workshops on legal literacy and awareness, people must be told not only how to avail the free legal services, but also how to avoid litigation in the first place. For this purpose, the legal aid programs need to be strategically planned and executed. People must also be consulted in this process, so that the programs may be effective.



## Chapter - 6

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# **“PRO BONO – A TOOL TO ACCESS TO JUSTICE: SOCIO-LEGAL PERSPECTIVE IN INDIA”**

Soniya Gupta\*

### **Abstract**

*“It is the spirit and not the form of law that keeps justice alive.”*

*- LJ Earl Warren*

Justice is a trite, and is recognized as a fundamental right by constitution albeit existed in law of nature. However, this right of human beings in the trinity of access to justice i.e., accessibility, affordability and justice, is losing its significance to remain at the top of the pyramid. Access to justice irrespective of the kind of government that exists in a country, this right cannot be denied and hence, to enhance the right to access to justice especially to the marginalized sections of the nation, the Department of Justice under the Ministry of Law and Justice, Government of India, initiated the Nyaya Bandhu Pro bono Legal Services in 2017.

The paper will delve into the concept of access to justice and pro bono as one of the tools of access to justice for socio-legal transformation and the opportunity and the

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challenges that exist. Also, the measures taken by different nations to implement pro bono activity and schemes.

The paper's main contribution is therefore to advance pro bono as a tool to access to justice in India, and a suggestion for effective implementation of institutional structure to promote pro bono culture in India. Furthermore, the paper touches upon the opportunities and challenges associated with the implementation of pro bono services in India. It examines the need for policy, increased awareness, and collaborative efforts among legal practitioners, civil society organizations, and the government to expand the reach and effectiveness of pro bono initiatives.

This abstract emphasizes the multidimensional aspects of pro bono services, intertwining legal principles with socio-economic realities. It underscores the significance of pro bono work not only in providing legal assistance but also in fostering a more inclusive and equitable society.

**Keywords:** Access to justice, Pro bono, Justice – a fundamental right, Legal Empowerment, Opportunity and Challenges of pro bono.

## **I. INTRODUCTION**

“The greatest tragedy in life is not death; the greatest tragedy takes place when our talents and capabilities are underutilized and allowed to rust while we are living.”  
Amma

One of the most significant considerations for any individual would be in the affirmative answer to the question, does he have the ability to get justice? This question is asked specially by those group of individuals who lack financial and/or other capabilities and have been struggling to come into the stream of the society. These groups are often termed as marginalised groups in our society. However, they are not the only ones, there exist other individuals too who lack the opportunity due to certain socio-economic issues, ethical issues, political issues, etc. The Constitution of India guaranteed right to life<sup>1</sup> and Equality before law<sup>2</sup> to every person without any discrimination and therefore, justice is an integral part of an individual right to life living with dignity and not mere animal existence.<sup>3</sup>

The access to justice is a basic principle of rule of law<sup>4</sup> and for any democratic setup the rule of law must be upheld and hence access to justice must be impartial and non-discriminatory as rightly underlined by the United Nations. The concept of access to justice, legal aid, *pro bono* are used synonymously and interchangeably even by some of the members of the legal fraternity and many of

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<sup>1</sup> INDIA CONST. art. 21.

<sup>2</sup> INDIA CONST. art. 14.

<sup>3</sup> *Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.*, (1985) 3 SCC 545.

<sup>4</sup> UNITED NATION & RULE OF LAW, <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> (last visited Oct. 13, 2023).

them are unaware or have misconceptions about the term *pro bono* including law students and lawyers.

“Access to justice” is a foundational principle that underscores the idea that everyone, regardless of their economic or social standing, should have the ability to navigate and utilize the legal system to secure fair and impartial treatment. It encompasses a range of measures aimed at breaking down barriers that might impede individuals from seeking and obtaining justice and one of such tools is *pro bono*, but Pro bono service has not gained much momentum in India to correct capitalization and agreement as a concept and as a means to provide an enduring contribution to access to justice. Even though laudable *pro bono* services are already being rendered by some practitioners and law firms and even senior advocates, this system has not received its due recognition and continues to remain a mere ad hoc and individualised practice of a handful.<sup>5</sup>

The Government of India under the Department of Justice has initiated a programme under the name of ‘Nyaya Bandhu *Pro bono* Legal Service Programme’ in 2017 and dedicated a website for easy access to all including the parties and lawyers. Even the Supreme Court while designating a Senior Advocate considers the *pro bono* activity undertaken by the applicant as one of the criteria for appointment. The *pro bono* should be implemented as

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<sup>5</sup> Chinmay Pradip Sharma, *Pro Bono Work: A case for its integration into Legal Services in India*, SCC ONLINE BLOG (Oct.16, 2023), <https://www.sconline.com/blog/post/2018/08/04/pro-bono-work-a-case-for-its-integration-into-legal-services-in-india/>.

an institutional structure albeit exist certain opportunities and challenges in its implementation as an institutional structure but for a greater, just and equitable society, it is argued that *Pro bono* shall be made mandatory like the other faculties such as Medical Science and should be backed by some policy for its implementation in its spirit and not only in form.

## **II. CONCEPT OF ACCESS TO JUSTICE: PRO BONO A TOOL TO ACCESS TO JUSTICE FOR SOCIO-LEGAL TRANSFORMATION**

Owing to the dearth of understanding of the concepts of access to justice, legal aid and *pro bono* among the legal fraternity, it is of utmost important to deal with this topic for providing better understanding. In a general parlance, even many of the practising lawyers have misconception and equate *pro bono* with the legal aid scheme and access to justice. However Legal Aid is a genus for “Access to justice” and *Pro bono* is a species to promote access to justice under the scheme of legal aid under article 39-A.<sup>6</sup>

### **What is Access to Justice?**

As mentioned earlier, access to justice is a basic principle of rule of law. However, In *Anita Kushwa v. Pushpa Sudan*,<sup>7</sup> the Supreme Court held that ‘access to justice’ is a facet of rights guaranteed under Articles 14 and 21 of the

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<sup>6</sup> INDIA CONST. art. 39-A, *amended by* The Constitution (Forty-Second Amendment) Act, 1976.

<sup>7</sup> *Anita Kushwa v. Pushpa Sudan*, AIR 2016 SC 3506.

Constitution. The following are the main facets that constitute the essence of access to justice:

- (1) The State must provide an effective adjudicatory mechanism;
- (2) The mechanism so provided must be reasonably accessible in terms of distance;
- (3) The process of adjudication must be speedy;
- (4) The litigant's access to the adjudicatory process must be affordable.<sup>8</sup>

In other words, every individual shall have an opportunity to irrespective of the disabilities that they may have, and none should be denied this fundamental right in any manner and it is a duty cast upon the State by the Constitution of India to ensure right to access to justice of each and every individual which is a cornerstone of any democratic societies.

### **What is meant by Legal Aid?**

The origin of concept of legal aid can be traced back to the historic *Magna Carta* of 1215.<sup>9</sup> The First Law Commission in its 14<sup>th</sup> Report, titled 'Reform of Judicial Administration', 1958 recommended the Legal Service Authority at various level, for proper representation of a party in a case in a court of law, for a person unable to obtain access to court for defending himself against the wrong due to financial disability, Justice becomes unequal

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<sup>8</sup> Dr. J. N. Pandey, Constitutional Law of India 87 (Central Law Agency 2019).

<sup>9</sup> Dr. N. V. Paranjape, Studies in Jurisprudence 617 (Central Law Agency 2019).

and laws which are meant for his protection have no meaning and to that extent fail in their purpose. The rendering of legal aid to poor litigants is therefore not a minor problem of procedural law, but a question of fundamental character.<sup>10</sup>

The Constitution of India under article 39-A provides “*Equal justice and free legal aid to economically backward classes*.”<sup>11</sup> The Supreme Court in its historic decision in *Hussainara Khatoon v. State of Bihar*<sup>12</sup> followed by a subsequent decision in *Kadra Phadia v. State of Bihar*<sup>13</sup> held that the right to free legal aid and assistance is one of the facets of the Right to Life under article 21 of the Constitution of India.

**Legal Aid: A Beacon of Equality:** At its core, embodies the principle of equality before the law. the fundamental components of legal aid, emphasizing its role in providing financial and informational support to those who might otherwise be excluded from the legal process. It's not just about legal representation; it's about empowerment and equalizing the scales of justice.

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<sup>10</sup> M.C. Setalvad, *Reform of Judicial Administration*, 14<sup>th</sup> Report, First Law Commission of India, 587, 587 (1958), [https://lawcommissionofindia.nic.in/report\\_first/](https://lawcommissionofindia.nic.in/report_first/).  
<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080514.pdf>

<sup>11</sup> INDIA CONST. art. 39-A, *amended by* The Constitution (Forty-Second Amendment) Act, 1976.

<sup>12</sup> *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360.

<sup>13</sup> *Kadra Phadia v. State of Bihar*, AIR 1980 SC 939.

### **What is Pro bono and how does it differ from the other two concepts?**

*Pro bono* as a term does not find a place in the ancient literature however the concept of ‘Sewa’ meaning ‘Selfless Service’ is grounded in our roots and many stories of these selfless service can be found in our ancient history literature as a path for attaining spiritual enlightenment. *Pro bono publico* is a Latin phrase which means “for the good of the people”. It is commonly used in its short form “pro bono”. In the legal sphere, the term “pro bono” refers to legal services performed free of charge or at reduced fees for the public good. The essence of *pro bono* lies in the tradition of giving back to the community and ensuring that legal representation is not confined only to those with financial means rather promoting human rights, and supporting communities in need.

Pro bono work is not to be confused with the traditional legal aid services, which relate to services provided by lawyers who are engaged by the legal services authority. Pro bono services seek to leverage the skills of highly trained, successful and top legal professionals to help those who are unable to afford lawyers.<sup>14</sup> The *Pro bono* Champions work without any expectation of consideration for the good of the society and whereas the lawyers under legal aid are being paid for their services rendered to the poor by the State Authorities, although these services are

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<sup>14</sup> Chinmay Pradip Sharma, *supra* note 6.



free for the litigants and u/s.12.<sup>15</sup> Criteria for giving legal services are provided under the legal aid scheme.

The legal aid and *pro bono* are a means to access to justice supporting the marginalised group and those individuals who due to some other disabilities<sup>16</sup> could not represent their side in a court of law, Thus, Legal aid and *Pro bono* leads towards a path of access to justice.

*Pro bono* a tool for socio-legal transformation: Unlocking the doors of justice- the symbiotic relationship between the 'access to justice' and *Pro bono* as a powerful tool in the hand of the legal professionals, law school and university, law student and other entities of legal fraternity can change the face of the administration of justice not theoretically but in practice. The legal professionals including the budding lawyers and other players' commitments to providing the free legal assistance becomes a catalyst in ensuring that justice is not an abstract concept but a tangible reality accessible to all. Such selfless service towards the society by the legal professional will transform the society in making the society equitable, without any discrimination and easy access to the doors of justice which indeed will change the perspective of the society towards justice as a resort for

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<sup>15</sup> The Legal Service Authority Act, 1987, § 12, No. 39, Acts of Parliament, 1987 (India).

<sup>16</sup> Note: The accused terrorist Ajmal Kasab was defendant by a lawyer appointed under legal aid cell, out of many reasons of disabilities, Mumbai's Bar Association decided that its member would not take the case. (An Article on Law vs conscience: Lawyer's dilemma in defending Kasab, *available at*: <https://www.news18.com/news/india/law-vs-conscience-lawyers-dilemma-in-defending-kasab-303898.html>).

them, (as of now, due to high fees of the advocates and other costs, many of the litigants does not look upon the justice system as a resort for their problems). It will enhance the effective administration of justice not only in the court of law but also in the form of alternative dispute resolution. If advocates or other entities, by committing themselves to provide services free of cost even in providing counselling, or making a brief or offering a legal opinion on the dispute or creating awareness among the masses of their right, and so on.

*Pro bono* as an innovative approach and emerging trend is evolved to meet the changing needs of the legal landscape. To name a few, “Project 39A” inspired by the Article 39-A of Constitution, does research in various fields including legal aid, forensic, etc.<sup>17</sup> The *Pro bono* India, India’s first platform integrating Legal Aid & Awareness Initiative, aims to integrate legal aid and awareness initiatives.<sup>18</sup> The Saikrishna and Associates, is a legal firm offering *pro bono* services,<sup>19</sup> and many such firms, government and non-government organizations are doing commendable work for the society.

Even though laudable *pro bono* services are undertaken by various entities, the time had come to make the *pro bono*

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<sup>17</sup> NLU DELHI & PROJECT 39A, <https://www.project39a.com/nlu> (last visited Nov. 18, 2023).

<sup>18</sup> PROBONO INDIA, <https://pro-bono-india.in/> (last visited Nov. 18, 2023).

<sup>19</sup> SAIKRISHNA & ASSOCIATES, <https://www.saikrishnaassociates.com/pro-bono/> (last visited Nov. 18, 2023).

a mandatory service backed by a framework to enable the country to experience the socio-legal change and to achieve the objective of the Preamble i.e., Justice for all its citizen, which lies at the heart of the constitution.

### **III. OPPORTUNITIES AND CHALLENGES OF PRO BONO**

This part embarks on an exploration of the dynamic world of pro bono service in the legal realm. It delves into the opportunities that arise when legal professionals offer their expertise free of charge and the challenges that accompany this noble endeavour.

- 1) Unveiling the opportunities: There are many opportunities that lie ahead with the *pro bono* activity when performed: a) A qualifying parameter for designating as senior advocate,<sup>20</sup> b) Recognition in the society c) Professional Growth d) Equality to all- Empowering Communities, e) Right to legal assistance to all, f) Legal support to marginalised groups, g) Networking among the legal community, h) last but not the least a sense of satisfaction.
- 2) Tracing the challenges: There exist challenges too in the *pro bono* work: these are some challenges that accompany these noble acts: a) Lack of willingness among the stakeholder except few, b) Conflict of Interest between regular client and *pro bono* client, c) Time

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<sup>20</sup> Indira Jaising v. Supreme Court of India, (2017) 9 SCC 766.

Constraint, *d)* Limited Resources *e)* Financial Constraint, *f)* Corruption, *g)* Lack of recognition to Individual lawyer doing *pro bono*.

#### **IV. MEASURES OF VARIOUS GOVERNMENTS AT INTERNATIONAL LEVEL FOR IMPLEMENTING PRO BONO AS A PART OF THEIR LEGAL SYSTEM**

The importance of *pro bono* activities has received due recognition not only in India but almost in all the countries in the world and it is not only governments that are working to bring the *pro bono* institution in the mainstream but the non-governmental entities and individuals are playing a greater role ensuring access to justice to all. The legal framework varies significantly between countries and no uniform international standard is enacted. However, some countries expect their lawyers to do *pro bono* voluntarily, few mandate their legal professional to do *pro bono* work for a few hours as an obligation.

**United State of America:** The *pro bono* activity in the United State of America had wide phenomena, many law firms provide *pro bono* service, beyond the billable hours including representing clients in class action cases. The American Bar Association Model Rules of Professional Conduct under Rule 6.1: Voluntary *Pro bono* Publico Service, casts a professional responsibility on the lawyers to render at least 50 hours of *pro bono* service per year although it is not mandatory but many states of the country have adopted it and the rule has become a touch

bearer in the effort in enhancing the *pro bono* activity to the marginalised section of the society.<sup>21</sup>

**United Kingdom:** Although, the *pro bono* service is encouraged in the United Kingdom, Unlike United States America, no such provision is mandated for Solicitors to do *pro bono*. However, many entities voluntarily engage themselves in the *pro bono* activities and legal aid service is well established to provide the service to the marginalized section in the country.

**South Africa:** The Bar Councils and Law Societies of South Africa in 2003 have implemented the mandatory requirements of *pro bono* work for strategically expanding access to justice under Cape Bar *Pro bono* Rules which mandates the members of the legal profession to render 20 hours of *pro bono* service and failure to do so without an explanation will result in fine or disciplinary action. The *pro bono* is regulated by various committees formed under the *Pro bono* Rules.

**Australia:** Australia prides itself as a global *pro bono* leader.<sup>22</sup> Australian Government does not mandate the *pro bono* activities for its solicitors, however, the Parliament of Australia, Senate Standing Committees on Legal and Constitutional Affairs in its Reports 2002-2004 has recommended *pro bono* legal service through more efficient

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<sup>21</sup> Chinmay Pradip Sharma, *supra* note 6.

<sup>22</sup> Latham & Watkins LLP, Pro Bono Practices and Opportunities in Australia, LATHAM & WATKINS (last visited Nov. 19, 2023) <https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-australia-3.pdf>.

screening and referral structure and increase support from the larger firms is to be commended, the work of non-profit organization in mobilising the legal profession to better organize and coordinate its *pro bono* services is to be commended.

**Nepal:** The *pro bono* services are not mandatory in Nepal and *pro bono* activities are done voluntarily. However, the Nepal Bar Association in their Accessible Quality Legal Service for Justice Periodic Strategy Plan 2020-2024 aims to accomplish professional responsibilities for free legal aid service to the needy by operating a system of documentation and achieving of legal aid and *pro bono* services by lawyers with supervision and monitoring.

**South Korea:** South Korea has imposed a mandatory *pro bono* legal requirement on lawyers of a minimum 30 hours per year, or 20 hours under special circumstances. There is a penalty provision for not fulfilling the *pro bono* minimum requirement, of KRW 20,000–30,000 (approx. US\$16–24) per hour of non-compliance. If the fines go unpaid, lawyers are subject to disciplinary sanctions by the Korean Bar Association.<sup>23</sup>

**India:** The Government of India under the department of law and justice initiated a programme and created a website dedicated to Nyaya Bandhu *Pro bono* Legal Services in 2017, in a hassle -free mode for reaching the

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<sup>23</sup> Victoria Garabato, *The Development of Pro Bono in Asia: Opportunities and Challenges*, INTERNATIONAL BAR ASSOCIATION, <https://www.ibanet.org/article/201ECD4E-A76F-4B7C-85A9-5A5F74AAAF29>.

communities in need. It is a mobile application at the click of the finger both the lawyer and party can connect with each other. Although, *pro bono* is not mandatory, many actors in the field are voluntarily doing *pro bono* work. The Department of Justice has prepared a Standard Operating Procedure on Pro Bono Club Scheme for regulating the Pro Bono Club under the Nyaya Bandhu Scheme.

Tele- Law is another mobile application aimed to provide a service to all specially at the Panchayat level spread across the country. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987, to provide free Legal Services to the weaker sections of the society and to organize Lok Adalat for amicable settlement of disputes and NALSA has also organised as a part of Azadi ka Amrit Mahotsav “Pan India Awareness and Outreach Campaign” from 02<sup>nd</sup> October to 14<sup>th</sup> November 2021, wherein almost all the stakeholders of the legal fraternity participated voluntarily making it a successful campaign though it was under the legal service it apparently was a *pro bono* activity in real sense. Almost all the law school and University and their students, legal authorities at various levels including the senior advocates have shown enthusiasm in this campaign.<sup>24</sup>

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<sup>24</sup> The detail activity and data are available at: <https://nalsa.gov.in/library/pan-india-awareness-outreach-campaign>.

## V. THE WAY FORWARD: PRO BONO AS AN INSTITUTIONAL STRUCTURE

With over 1.4 million registered lawyers nationwide in India, the number of pro bono champions are handful. Hence, keeping in mind the financial burden on the state and the huge number of pendency leading to the famous quote of “Justice delayed is justice denied”.

**1) Mandatory *Pro Bono* Service:** *Pro bono* shall be mandatory and all the stakeholders shall be responsible in one way or the other to perform *pro bono* including the lawyer practising and non-litigating, law school and University and their student, Legal Firms.

**2) Enacting *Pro bono* Policy:** Pro bono policy must be made for implementing it as an institution structure like that of legal aid cell and legal service authority. The Pro Bono Policy may include certain points as a clause in the policy for better implementation of the Pro bono institution structure: The same is provided at the end of the paper as a schedule.

**3) *Pro bono* as a compulsory subject:** Pro bono must be made compulsory subject like moot court for moulding the student towards a selfless service to the society. The Standard Operating Procedure on *Pro bono* Club Scheme has recommended to make it an optional subject, however, such a suggestion is only for those schools and universities who are registered under Nyaya Bandhu Scheme.

The *Pro bono* as an Institution will expand access to justice with over millions of lawyers in the country, and the



enthusiasm among the student and legal professionals shown for the Pan India Campaign will pave a way for enhanced administration of justice in the country.

**a) Need of *pro bono* as an institutional structure.**

1. To expand the horizon of access to justice.
2. To enhance the administration of justice.
3. To decrease the number of cases pending in the court
4. *Pro bono* in Alternate Dispute Resolution for out of court settlement.
5. To enhance the knowledge of the would-be lawyer and students
6. To equip the lawyer with the cultural and tradition of the courts and so on.

**b) An assessment of challenges in implementing *pro bono* as an institutional structure.**

The suggestion of making *pro bono* work as a mandate for legal fraternity and policy on the same is not flawless and have some opportunities if implemented and many oppositions would be raised against such suggestions made

- 1) Defence would be when no other profession such as doctors and engineers are obligated to do *pro bono* then why the legal professional shall be burdened with such a mandate? Answer to the same is that the Legal Profession is considered as a noble profession in the world and performs the activity of bringing the wrongdoer to justice and as an officer of the court, it is a duty of the lawyer to assist the

court in doing the justice. And hence, equating it with the doctor and engineers wouldn't be fair.

- 2) The other defence would be of putting restriction on the fundamental right to practice any profession, to carry on any occupation, trade or business u/a 19(1) (g).<sup>25</sup> It is to be noted that it is not the restriction rather it will improvise the knowledge and will provide an opportunity of a hand on experience to the lawyer and student which inversely result in the increase in the number of prospect clients through publicity.

## VI. CONCLUSION

The main object of this paper is to advance *pro bono* as a tool for access to justice for socio-legal transformation, and to implement *pro bono* as an institutional structure for effective administration of justice and the effective implementation of policy is the need of the hour. The preceding discussion highlights *pro bono* as a tool for socio-legal transformation and the opportunities and challenges that prevails and the various measures taken by various governments for implementing *pro bono* as a means to access to justice. However, only relying on a handful of entities has not proven to be efficient in achieving the hollow object of justice.

In this circumstance, the final part of this paper has suggested a way forward under 3 heads: first *pro bono*

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<sup>25</sup> INDIA CONST. art. 19, cl. 1 (g).

service mandatory for lawyer and other stakeholders, secondly *pro bono* policy

and third *pro bono* as a compulsory subject for students for better understanding and hand on experience during their academics. It is argued that the development of law is a long-awaited step in the right direction in addressing the implication of inaccessible access to justice.

## **VII. SCHEDULE**

The Pro Bono Policy may include the following for better implementation of the Pro bono institution structure:

- 1) Title of the Policy
- 2) Definition under the policy
- 3) Qualification of *Pro bono* Litigants
- 4) Mandatory *Pro bono* for Stakeholders: Specifying each one of them and their responsibility and the exception if any.
- 5) Provision on Non-compliance
- 6) Rewards and Recognition: Unlike some countries where penalties are imposed for non-compliance of the *pro bono*, instead rewards and recognition are offered for those complying with the mandate. Certificate of Recognition and some financial rewards.
- 7) Tax Benefits for pro bono work: To offer tax benefit to that lawyer complies with the mandate.
- 8) Professional Indemnity: shall be provided for indemnifying the lawyers for the loss that may incur in pro bono case.

- 9) Benefits to Students: Some credit to be offered to students doing *pro bono* activity in their academics and certificate of recognition.
- 10) Maintenance of Record and Register by use of Science and Technology
- 11) Annual Audit.

## Chapter - 7

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# THE PROBLEMS AND PROSPECTS OF CLINICAL LEGAL EDUCATION IN INDIA: AN ANALYSIS

Dr. Himangshu Ranjan Nath\*

### **Abstract**

Legal education in India extends beyond professional pursuit; it functions as a platform for intellectual growth, instilling cultural values, and contributing to the nation's growth. Recognized as an essential element of the entitlement to life and personal liberty, as safeguarded by the Constitution, legal education is intricately associated with the Article 39A that is designed to uphold equal justice. Within the constitutional framework, legal education holds considerable importance, playing a vital role in moulding a nation's legal system and achieving the goals of equality, liberty, justice and fraternity. Therefore, legal education should not only tackle matters concerning life, technology, governance, and accountability but should also foster humane intellectual qualities. It is believed that the "Clinical Legal Education" (hereinafter, CLE) has the potentiality to foster the above expectation. The aim

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of this write up is to comprehensively explore the historical evolution of CLE in India, emphasizing the initiatives of the Bar Council of India (hereinafter, BCI) with a specific focus on the “New Education Policy” (hereinafter, NEP). Additionally, it also scrutinizes the primary challenges encountered during the inception of CLE and offers possible solutions to address these challenges.

**Keywords:** Clinical Legal Education, Legal Aid, Access to Justice, New Education Policy

## **I. INTRODUCTION**

India, grounded in democratic principles and guided by the constitutional foundation of the “rule of law”, assigns a pivotal role to the legal profession in championing constitutional ideals. The development of legal experts proficient in handling this duty depends significantly on the crucial role played by legal education. Looking at the scope within the profession of legal practice extends beyond courtroom practice, encompassing individuals involved in teaching, research, judicial work, and various administrative capacities. Supervision of legal education in India is within the jurisdiction of the BCI.

Founded in accordance with the Advocates Act of 1961, the BCI functions as the supreme authority, setting standards for legal education, accrediting, and scrutinizing universities, and executing

initiatives to foster legal knowledge.<sup>1</sup> Authorized by the Act, the BCI has initiated reforms with the goal of enhancing the quality of legal education nationwide. One of such recent advancements in legal education in India is CLE, a pedagogical strategy designed to bridge the gap between theoretical understanding and practical legal skills.<sup>2</sup>

The essence of CLE in India is a product realization that traditional classroom instruction alone falls short in producing adept lawyers. This invention involves law students in hands-on experiences, seeking not only to mold them into proficient legal practitioners but also to cultivate awareness about socio-economic issues. The overarching goal of CLE extends to providing legal assistance to economically disadvantaged segments of society and ensuring universal access to justice, apart from giving law students first-hand experience of client counselling.

Within our constitutional framework, advocates hold considerable importance, playing a vital role in moulding the nation's legal system and achieving the goals of liberty, justice, fraternity, and equality. According to Blackstone, legal education imparts

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<sup>1</sup> Priyashikha Rai, *Conceptualising Clinical Legal Education in Legal Pedagogy of India: Significance and Challenges*, TURKISH JOURNAL OF COMPUTER AND MATHEMATICS EDUCATION, <https://turcomat.org/index.php/turkbilmat/article/view/6955>, accessed on May 23, 2024.

<sup>2</sup> Bar Council of India Rules, 2008.

essential knowledge about the country, becoming an integral part of the cultural tapestry and fostering the development of individuals with a strong sense of human rights and ideals. Thus, in the intricate socio-legal landscape legal education should not only tackle matters concerning life, technology, governance, and accountability but should also foster humane intellectual qualities.<sup>3</sup>

As CLE got introduced in India, several factors challenge its efficacy and future. Shifting social contexts and economic constraints raise concerns about the sustainability of this educational approach. Here, an attempt is made to evaluate the current state of CLE, exploring its historical roots, the initiatives of regulatory bodies, and the challenges encountered in its implementation.

## **II. EVOLUTION OF CLINICAL LEGAL EDUCATION IN INDIA**

Exploring the complex landscape of India's legal education system unveils the intriguing narrative of the evolution and recognition of CLE. Looking back to the early 21<sup>st</sup> Century, legal educators and regulatory bodies, particularly the BCI, began to critically acknowledge the limitations inherent in

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<sup>3</sup> Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, <https://elibrary.law.psu.edu/psilr/vol22/iss3/5/>, accessed on July 25, 2024.



traditional legal pedagogy. It became apparent that the cultivation of proficient lawyers required an educational approach that transcended the boundaries of conventional classroom teaching.

The inception of CLE marked a departure from established norms, indicating a significant shift in legal pedagogy. Recognizing the need for law students to gain real-world experience alongside theoretical knowledge, this realization prompted a transformative journey. Empowered by its functions outlined in the Advocates Act, the BCI proactively took steps to enhance the quality of legal education by introducing practical components through CLE.<sup>4</sup> The Act played a pivotal role in establishing the essential legal framework for the smooth integration of the legal course curriculum in India. It granted the BCI the authority to set minimum qualifications for admission to law degrees and formulate rules regarding legal education standards for universities in India. These rules established a structured framework, including the incorporation of CLE within the broader legal education system.<sup>5</sup>

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<sup>4</sup> Frank S Bloch, *Legal Aid, Public Service and Clinical Legal Education: Future Directions from India and the United States*, <https://repository.law.umich.edu/mjil/vol12/iss1/3/>, accessed on October 20, 2024.

<sup>5</sup> K. C. Jena, *Role of Bar Councils and Universities for promoting legal education in India*. 44(4), JOURNAL OF THE INDIAN LAW INSTITUTE, pp. 555-568, (2002).

However, like any transformative initiative, the integration of CLE encountered its set of challenges. The transition from traditional teaching methods faced resistance and skepticism within academic circles. Despite these obstacles, the resilience of legal educators, coupled with the support of regulatory bodies such as the BCI, facilitated the gradual acceptance and mainstreaming of CLE in law schools nationwide.

The realm of legal education in India has undergone a substantial transformation with the advent of CLE. This pioneering approach, initially non-existent, has evolved into a vital element in moulding the future legal professionals. The worldwide inclination toward CLE has also prompted the establishment of committees and commissions in India with the objective of fostering and integrating it into the law school curriculum.

The roots of CLE in India can be traced back to the early 20<sup>th</sup> Century, marked by a proposal for clinical education in law by Alexander Lyublinsky, a Russian professor, in 1901. However, it wasn't until the 1960s that CLE gained substantial traction in legal education. The UK formally embraced CLE in 1970, followed by USA and Australia in the same decade. In India, despite the initiation of formal legal education in 1855, practical courses only became compulsory in 1949, highlighting the recognized need for a

combination of theoretical and practical training.<sup>6</sup> A crucial turning point in the evolution of CLE took place in 1997 when the BCI issued a directive during the National Seminar on Legal Education (Bombay) mandating universities and law schools to overhaul their curricula. In response, the National Law School of India University, Bangalore, introduced both compulsory and optional clinical courses. Despite some colleges organizing legal literacy camps, the establishment of Legal Aid Clinics fell behind.<sup>7</sup>

A groundbreaking moment occurred in 1998-99 when the BCI took a decisive step by making CLE mandatory, introducing four practical papers in the legal education curriculum. This initiative aimed to bridge the gap between theoretical knowledge and practical application. The Law Commission of India and the National Knowledge Commission also underlined the necessity for constructive reforms in legal education in 2002 and 2007, respectively.

Despite significant progress, an assessment of CLE in India reveals a disparity between existing clinical learning and practical, real-world application of the same. Structural reforms are imperative to fully

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<sup>6</sup> Sharma, Institutional Repository NBU: Clinical Legal Education in India: A Contemporary Legal Pedagogy.

<sup>7</sup> D. W. Tushaus, S. K. Gupta and S. Kapoor, *India Legal Aid Clinics: Creating Service-Learning Research Projects to Study Social Justice*, ASIAN JOURNAL OF LEGAL EDUCATION, 2(2), pp. 100-118 (2015).

implement CLE across all legal education centres. The collaboration between Legal Service Authorities and the BCI underscores the role of CLE in promoting justice-oriented education and legal aid initiatives.

CLE, with its emphasis on hands-on learning and the practical application of legal principles, provides a platform for students to confront ethical challenges akin to those posed by the principles of dharma. Engaging in real cases allows aspiring legal practitioners to navigate the intricacies of actual legal scenarios, developing their capacity to make ethically sound decisions in the face of practical challenges. The immersive nature of CLE mirrors the experiential learning ingrained in the ancient Indian educational approach, where knowledge was acquired through direct engagement with real-life situations.<sup>8</sup>

### **III. SIGNIFICANCE OF CLINICAL LEGAL EDUCATION**

CLE stands as a transformative influence in legal pedagogy, functioning as a dynamic link between theory and practice. Its profound importance extends across law students, legal education, and the broader legal system. As we explore the dimensions of CLE, its intricate layers come to light, encompassing the

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<sup>8</sup> Margaret M Barry, SSRN, *Clinical Education for this Millennium: The Third Wave*, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2548228](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2548228), accessed on 22 May, 2024.

development of practical legal skills, the inculcation of ethical considerations, and the advancement of social justice.

At the core of CLE is its dedication to nurturing practical legal skills among law students. Traditional legal education often leans heavily on theoretical aspects, leaving a gap in preparing students for the practical demands of legal practice. CLE addresses this gap by immersing students in simulated legal scenarios that closely resemble real-world situations. Components such as moot courts, client interviews, legal drafting exercises, and negotiation simulations are integral to CLE programs. Through these activities, students not only grasp legal concepts theoretically but also apply them in practical settings, refining skills essential for effective legal representation.<sup>9</sup>

CLE stands out for its community-centric approach, cultivating a sense of responsibility towards the society among law students. Numerous clinical programs incorporate legal aid services and community involvement as integral components, serving a dual purpose. Firstly, students gain

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<sup>9</sup> Mandava Rama Krishna Prasad, Legal Education in India: Role of Clinical Legal Education in Developing Institutionalizing and Implementing a Social Justice Mission for Law Schools, SHODHGANGA, <https://shodhganga.inflibnet.ac.in/handle/10603/12649>, accessed on June 5, 2024.

exposure to the legal needs of marginalized communities, and secondly, these communities receive vital legal assistance. Through active participation in legal aid clinics, students become catalysts for change, contributing to the overarching objective of improving access to justice.<sup>10</sup>

Moreover, CLE holds significant importance in shaping the professional identity of law students. Exposure to real legal situations, direct interactions with clients, and engagement with legal professionals contribute to the cultivation of a professional demeanour. This immersive experience enables students to recognize their strengths, areas for improvement, and their distinctive contributions to the legal profession. As legal systems undergo changes due to increasing globalization, CLE programs provide students with exposure to international and comparative legal perspectives. This global orientation is essential for preparing future legal professionals to navigate the intricacies of cross-border legal issues. Exposure to diverse legal systems not only enhances cultural competence but also nurtures a nuanced comprehension of the interconnected nature of legal challenges on a global scale.

Importantly, CLE extends beyond the development of individual skills; it contributes to systemic

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<sup>10</sup> *Id.*

improvements in legal education and the legal profession. Research and initiatives undertaken within clinical programs have the potential to instigate systemic changes. From proposing legislative reforms to challenging legal norms, CLE can serve as a catalyst for positive transformations in the legal field.

Within the realm of CLE, students undergo comprehensive training in drafting, pleading, and various technical aspects of legal practice. The pedagogy of clinical programs equips students with a holistic understanding of the professional skills demanded in the legal profession. Going beyond theoretical lectures, it offers an immersive experience simulating real legal scenarios. Through moot courts, client interviews, and legal drafting exercises, students refine their skills, preparing them for the challenges of legal representation in the actual legal landscape.<sup>11</sup>

An integral aspect of CLE involves the creation of clinics offering legal aid within law schools, serving a dual purpose of enriching students' legal education, and facilitating crucial access to justice in the community. Through representing clients in cases and participating in community projects, students closely interact with individuals grappling with real-

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<sup>11</sup> Emil Winkler, Clinical Legal Education-A Report on the concept of law clinics, (June 16, 2017).

life legal challenges. This interaction improves their communication skills, facilitating effective engagement with individuals from various economic, religious, and social backgrounds. Remarkably, legal aid clinics primarily cater to marginalized and economically disadvantaged communities, aligning with the broader goal of advancing social justice. The transformative impact of CLE is not just mere individual skill development; it holds major significance in shaping the professional identity of law students. Exposure to authentic legal scenarios, direct interactions with clients, and engagement with legal professionals contribute to the cultivation of a professional demeanour. This exposure allows students to recognize their strengths, areas for improvement, and their unique contributions to the legal profession.<sup>12</sup>

Thus, the diverse programs under CLE in legal education serves as a potent vehicle for imparting practical legal skills. It also fosters a commitment to social justice and instills an idea of responsibility among law students. While challenges persist, sincere efforts to improve the quality of CLE have the potential to bring about positive changes, promoting greater access to justice in society.<sup>13</sup>

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<sup>12</sup> Archana K., Practicability of Clinical Legal Education in India- An Overview, 4 JEP pp. 157, 157-58 (2013).

<sup>13</sup> Richard J. Wilson, Training for Justice: The Global Reach of Clinical Legal Education, 22 PSILR pp. 421, 421- 431 (2004).



#### **IV. IMPACT OF COVID 19 PANDEMIC ON CLINICAL LEGAL EDUCATION**

The onset of the COVID 19 pandemic has triggered a significant transformation in various sectors, and legal education in India, specifically CLE, has experienced substantial modifications. The temporary shutdown of educational institutions, implemented as a precautionary measure against the virus, has significantly affected the conventional approaches to providing legal education. Particularly in the realm of CLE, which inherently emphasizes experiential learning through hands-on activities, court visits, and real-world interactions, the abrupt transition to virtual platforms has introduced both obstacles and opportunities for transformation.

The lockdowns imposed due to the pandemic disrupted the conventional approaches to conducting legal clinics, moot courts, and mock trials, compelling legal institutions to rethink their teaching pedagogy. The absence of physical court proceedings and limited access to legal practice environments necessitated a swift adaptation to online modes of instruction. This shift prompted educators to explore innovative methods for delivering CLE in a virtual landscape. Courts, law firms, corporate legal departments, and other legal organizations suspended their physical internship programs due to safety concerns, restricting students' opportunities for hands-on experience. This disruption prompted a

reassessment of the role and structure of internships in the legal education curriculum.

In response to the constraints imposed by the pandemic, legal education institutions in India expedited the integration of technology into CLE. The emphasis on e- lawyering, virtual case simulations, and online dispute resolution mechanisms became integral components of the revised curricula. Students were required to acquaint themselves with legal technology tools, showcasing an adaptation to the evolving landscape of legal practice.<sup>14</sup> Efforts to replicate real-world legal scenarios in a virtual environment encountered distinct challenges. While online platforms facilitated some degree of continuity in CLE, technical glitches, limited interactivity, and the absence of the physical courtroom atmosphere presented obstacles to providing an authentic experience. Balancing the authenticity of practical learning with the constraints of virtual platforms emerged as a significant concern.<sup>15</sup>

As India navigates the evolving landscape of legal education in the post-pandemic era, the changes brought about by COVID-19 are poised to have a lasting impact on CLE. The lessons gleaned from this

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<sup>14</sup> Sital Kalantry, Promoting Clinical Legal Education and Democracy in India, 8 NUJS LAW REVIEW 1 (2015).

<sup>15</sup> Vijendra Kumar, Clinical Legal Education During COVID-19 Pandemic: Issues and Perspectives, (2020) ILI LAW REVIEW pp. 241, 248 (2020).

transformative period will play a pivotal role in shaping the future trajectory of legal education in India, emphasizing adaptability, innovation, and a holistic approach to the development of legal professionals.<sup>16</sup>

## **V. CHALLENGES AND CRITIQUES OF CLINICAL LEGAL EDUCATION**

CLE, while making significant contributions to legal education, faces various issues and difficulties that demand thoughtful deliberation. One major problem is the limited availability of resources and infrastructure. Many legal education institutes, especially those in rural areas, encounter difficulties in establishing and maintaining well-equipped legal aid clinics.<sup>17</sup> The shortage of funds, combined with a lack of awareness about the importance of CLE, obstructs the development of a robust infrastructure to support practical learning initiatives.

Another crucial concern in this regard is the integration of CLE into the mainstream legal curriculum. Despite the BCI's emphasis on incorporating practical training into legal education,

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<sup>16</sup> Jeff Giddings, *Clinics in the Times of COVID-19*, 11 JINDAL GLOBAL LAW REVIEW pp. 229, 248 (2020).

<sup>17</sup> Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa*, 30 FORDHAM INTERNATIONAL LAW JOURNAL pp. 374, 374–77 (2007).

the actual implementation varies among institutions. Some legal education institutes face challenges in achieving a harmonious balance between theoretical and practical components, leading to an uneven emphasis on CLE.

Moreover, legal clinics frequently encounter challenges in establishing meaningful collaborations with external stakeholders such as legal practitioners, NGOs, and government bodies. Forming productive partnerships is essential for exposing students to a variety of legal issues and augmenting the practical relevance of CLE.

Critiques of CLE also underscore the need for a more comprehensive evaluation framework. The assessment of CLE often relies heavily on traditional examination models, overlooking the nuanced skills and competencies developed through experiential learning. Integrating innovative assessment methods that capture the multifaceted growth of students in legal clinics is crucial for a holistic evaluation of the program's effectiveness.

Furthermore, resource constraints, coupled with variations in institutional capacities, hinder the widespread adoption of CLE. Addressing these issues and challenges requires a concerted effort from legal educators, policymakers, and stakeholders. Striving for standardization, promoting interdisciplinary collaborations, highlighting various aspects of legal practice can collectively contribute to improving the

quality and relevance of CLE in India. Recognizing critiques as opportunities for improvement is integral to fostering a legal education system that produces adept and socially conscious legal professionals.<sup>18</sup>

To overcome the integration challenge, a comprehensive approach involves reevaluating the curriculum design is must. Integrating interdisciplinary elements, where legal education intersects with technology, sociology, and environmental studies, can enhance the practical relevance of CLE.<sup>19</sup> Furthermore, promoting faculty development programs focused on experiential teaching methodologies ensures that educators are well-prepared to deliver effective CLE. Enhancing the quality of supervision within legal clinics, the establishment of mentorship programs between experienced legal practitioners and faculty members can offer valuable insights. The workload reduction for the faculty engaged with CLE is also the need of the hour if CLE has to grow effectively.

A comprehensive approach that incorporates technological innovation, collaborative partnerships, curriculum redesign, mentorship programs, and

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<sup>18</sup> Asha Bajpai, Learning by Doing: Promoting Access to Justice to the Marginalized and Vulnerable Groups in India, 3 *ASIAN JOURNAL OF LEGAL EDUCATION* pp. 201, 208 (2016).

<sup>19</sup> Nidhi Sharma, *Clinical Legal Education in India: A Contemporary Legal Pedagogy*, 8 *INDIAN JOURNAL OF LAW AND JUSTICE* pp. 165, 169 (2017).

standardized guidelines can collectively address the challenges encountered by CLE. This multifaceted approach ensures a more dynamic and responsive legal education system that prepares students for the complexities of real-world legal practice.

## **VI. CLINICAL LEGAL EDUCATION AND THE NATIONAL EDUCATION POLICY**

The NEP signifies a serious move towards addressing current requirements in the education sector, albeit adopting a somewhat cautious stance on the issues encountered by institutions providing professional education, especially in the legal field. Although the policy briefly touches upon legal education, it implicitly emphasizes the need for international competitiveness, the incorporation of best practices, and the use of technology to enhance access to justice. However, there is minimal alteration in the policy concerning constitutional principles of justice, the rule of law, and other facets of legal education. This implies a potential lack of extensive consultation with legal academics and education regulators in India.

A notable drawback in the policy is its tendency to overly emphasize culture, tradition, and mythology, advocating a reliance on these elements in legal education. The use of such terms, especially within the context of the current government's emphasis on reviving ancient traditions and Hindu nationalism, raises concerns. The suggestion to explore ancient

legal texts, such as the Manusmriti, raises concerns due to their historical connections with anti-non-Brahmanical caste and anti-women sentiments. While acknowledging the significance of culture and tradition in influencing legal concepts, the policy neglects the dynamic nature of societies and the crucial aspect of cultural diversity, thereby worsening the issue.

The longstanding issue of the absence of representation for both students and academicians in the regulatory process remains unaddressed in the NEP as well. Despite persistent proposals advocating for the establishment of the National Council for Legal Education, which would include various stakeholders such as academicians, students, and regulatory bodies, these suggestions have consistently been disregarded. The introduction of the National Council for Higher Education in the NEP does not specifically cater to the regulatory needs of medical and legal education, thereby maintaining the current fragmented regulatory structure. This failure poses obstacles to enhancing legal education in general and CLE in particular. Thus, under the NEP the scope of effective CLE is very less.

## **VII. CONCLUSION**

The domain of CLE in India has undergone significant transformations since its inception. The sudden shutdown of educational institutions throughout the country because of COVID 19 pandemic has

profoundly impacted students at every academic tier, affecting not only their physical and mental health but also impeding hands-on, experiential learning. With the halt of moot courts, mock trials, and trial advocacy, coupled with the suspension of internships at law firms and legal institutions, the pandemic has presented substantial obstacles to the comprehensive growth of aspiring legal practitioners. CLE, not being an exception, also got severely affected by the pandemic.

The post-COVID 19 era has seen a transition to virtual learning methods, with legal education institutes embracing online teaching approaches. However, this shift to virtual platforms has somewhat marginalized clinical learning, resulting in a pause in students' active involvement in vital legal activities. It is to be noted that the emphasis on imparting practical skills, mediation, and negotiation techniques is crucial for producing legal professionals equipped to address the impending surge in legal cases and contribute to a more efficient and accessible justice system. However, as the pandemic fades into memory, the focus should not solely be on mitigating the immediate disruptions caused by it. Wider problems and challenges inherent in CLE, such as the restricted availability of resources, the need for better integration of CLE into mainstream legal curriculum, concerns about the quality of supervision, and the imperative for diverse and contemporary case exposure, demand sustained attention and systematic, strategic reforms.



## Chapter - 8

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# **ENHANCING ACCESS TO JUSTICE: OVERCOMING CHALLENGES OF ILLITERACY AND LACK OF AWARENESS IN LEGAL AID PROGRAMS**

Zakiya Sanu\*

Shagufta Kahkeshan\*\*

### **Abstract**

Access to justice, a cornerstone of democratic societies, faces significant impediments in the form of illiteracy and limited awareness of available legal aid programs. Illiteracy creates a profound information gap, restricting individuals' ability to comprehend and navigate complex legal systems effectively. This paper seeks to illuminate these challenges and propose solutions by comprehensively examining the transformative impact of legal awareness campaigns, workshops, outreach programs, and legal aid camps. This paper delves into the multifaceted factors contributing to illiteracy and explores how this lack

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of literacy intersects with limited awareness about available legal aid resources. The resulting impact on equitable access to justice will be elucidated to underscore the urgency of addressing these issues. Legal awareness campaigns, workshops, and outreach programs emerge as essential tools in promoting legal literacy. The latter part of the paper focuses on the immediate impact of legal aid camps. These on-the-ground platforms provide tangible legal support to marginalized communities, ensuring that legal aid is not only accessible but also responsive to the urgent needs of those in need. In conclusion, this paper advocates for a holistic approach to enhancing access to justice by addressing illiteracy and lack of awareness, emphasizing the significance of legal literacy initiatives and the indispensable role played by legal aid camps in ensuring justice is accessible to all.

**Keywords:** Legal aid, Access to justice, Illiteracy, Awareness.

## **I. INTRODUCTION**

In the pursuit of a just and equitable society, the accessibility of legal aid services is paramount. Legal aid stands as a beacon of hope for individuals who find themselves entangled in legal complexities but lack the financial means to secure legal representation. However, the noble mission of legal aid is encumbered by two formidable challenges: illiteracy and lack of awareness of legal rights. Illiteracy, rendering

individuals unable to read or write proficiently, and lack of awareness, leaving people uninformed about their legal entitlements, create significant barriers to the effective utilization of legal aid programs. This paper delves into the intricate web of challenges posed by illiteracy and lack of awareness, exploring their profound implications on the accessibility and effectiveness of legal aid services. As we navigate the complexities of these issues, we will also delve into innovative strategies aimed at overcoming these barriers, empowering individuals with the knowledge and skills necessary to engage meaningfully with legal aid, ensuring that the fundamental principles of justice and equality are upheld for all members of society.<sup>1</sup>

## **II. LEGAL AID ENSURING ACCESS TO JUSTICE FOR ALL**

Access to justice is a fundamental principle that underpins the democratic fabric of any society. It ensures that every individual, regardless of their economic or social standing, has the right to fair legal representation and assistance. Legal aid, as a cornerstone of this principle, plays a pivotal role in bridging the gap between those in need and the complex legal systems they must navigate. Legal aid

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<sup>1</sup> S. MURALIDHAR, LAW, POVERTY AND LEGAL AID: ACCESS TO CRIMINAL JUSTICE, (Lexis Nexis Butterworths 2004).

is not just a service, it is a manifestation of social justice and equality. By providing legal assistance to those who cannot afford it, legal aid ensures that marginalized and vulnerable populations have a voice within the legal system. It safeguards their rights, resolves disputes, and empowers them to participate meaningfully in society. Moreover, legal aid is not confined to criminal cases; it extends to civil matters such as housing disputes, employment issues, and family conflicts, making it a comprehensive mechanism for societal harmony.<sup>2</sup>

One of the primary virtues of legal aid lies in its ability to level the playing field. In legal battles, individuals with financial resources often have a distinct advantage due to their ability to hire experienced lawyers. Legal aid rectifies this imbalance by offering expert counsel to those who would otherwise be defenceless. In doing so, it ensures that the justice system remains truly blind, providing fair outcomes based on merits rather than financial prowess. Despite its significance, accessing legal aid is not always straightforward. Numerous challenges hinder its widespread availability and effectiveness. Financial constraints, administrative hurdles, and a lack of

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<sup>2</sup> Megha Sachan, *The Impact of legal aid programs on access to justice in India*, WHITE BLACK LEGAL (Oct. 18, 2023, 10:05 PM), [https://www.whiteblacklegal.co.in/details/%22evaluating-the-impact-of-legal-aid-programs-on-access-to-justice-in-india%22-by-adv-megha-sachan#\\_ftn](https://www.whiteblacklegal.co.in/details/%22evaluating-the-impact-of-legal-aid-programs-on-access-to-justice-in-india%22-by-adv-megha-sachan#_ftn).

awareness often impede individuals from seeking legal aid when they most need it. Moreover, legal systems vary widely across jurisdictions, creating a complex landscape that can be daunting, especially for those with limited resources and education.

Legal aid acts as a potent antidote to these challenges. By providing free or subsidized legal assistance, it mitigates the financial barrier. Furthermore, legal aid organizations engage in outreach programs and awareness campaigns, ensuring that individuals are informed about their rights and the available legal avenues. These initiatives not only bridge the knowledge gap but also empower communities, fostering a culture of legal literacy. Moreover, legal aid goes beyond individual cases; it contributes to the overall efficiency and fairness of the justice system. By preventing wrongful convictions, promoting early resolutions, and ensuring adequate representation, legal aid reduces the burden on courts and facilitates swifter dispensation of justice. This efficiency is not only essential for individuals but also crucial for maintaining societal trust in the legal system.

Legal aid is not merely a reactive measure; it is a catalyst for broader social change. By empowering individuals with knowledge and legal support, it enables them to challenge unjust laws, fight against discrimination, and advocate for their rights. In this way, legal aid becomes instrumental in shaping

progressive societal norms and fostering an environment where justice is not a privilege but a right for every citizen. Furthermore, legal aid serves as a deterrent against human rights abuses. When individuals are aware that legal assistance is within reach, potential violators are less likely to exploit vulnerable populations. Legal aid thus acts as a safeguard, discouraging unlawful actions and promoting a culture of accountability and respect for human rights.<sup>3</sup> In conclusion, legal aid stands as a beacon of hope in the realm of justice. Its importance cannot be overstated, for it ensures that the principles of equality, fairness, and justice are not mere ideals but tangible realities for all citizens. By addressing financial, informational, and systemic barriers, legal aid paves the way for a more equitable society where every individual, regardless of their background, can assert their rights and access justice.

### **III. CHALLENGES OF ILLITERACY AND LACK OF AWARENESS: IMPEDING THE EFFECTIVENESS OF LEGAL AID PROGRAMS**

In the pursuit of a just society, the provision of legal aid stands as a cornerstone, ensuring that even the most vulnerable members of society have access to

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<sup>3</sup> Chitrita, *Legal Aid Catalyst for social change*, LEGAL SERVICE INDIA (Oct. 18, 2023, 10:10 PM), <https://www.legalservicesindia.com/article/2079/Legal-Aid-Catalyst-for-social-change.html>.

justice. However, this noble endeavour faces significant challenges, particularly in the form of illiteracy and lack of awareness. These intertwined issues create formidable barriers that hinder the effectiveness of legal aid programs, preventing them from reaching their full potential and leaving countless individuals without the legal support they desperately need.<sup>4</sup>

### **i. Illiteracy: A Barrier to Understanding**

Illiteracy, the inability to read and write proficiently, poses a substantial obstacle in comprehending legal procedures and documents. Legal processes are often intricate and laden with complex terminologies, making it daunting for illiterate individuals to navigate this labyrinth. Illiterate persons struggle not only with understanding their rights but also with comprehending legal notices, forms, and court documents, leaving them vulnerable and defenceless in legal matters. Illiteracy not only affects comprehension but also erodes confidence. Illiterate individuals often feel intimidated and overwhelmed when faced with legal proceedings, leading to a lack of participation and effective communication with legal aid providers. This lack of participation

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<sup>4</sup> Sripriya T, *Legal Aid and Awareness in India: Issues and Challenges*, LEGAL SERVICE INDIA (Oct. 18, 2023, 10:10 PM), <https://www.legalserviceindia.com/legal/article-82-legal-aid-and-awareness-in-india-issues-and-challenges.html>.

exacerbates their vulnerability, perpetuating a cycle of marginalization within the justice system.

## **ii. Lack of Awareness: Ignorance Breeds Injustice**

Lack of awareness about legal rights and available legal aid services compounds the challenges arising from illiteracy. Many individuals, especially those from disadvantaged backgrounds, are unaware of their rights, the legal processes, and the existence of legal aid programs. This ignorance stems from a variety of factors, including limited access to education, social isolation, and cultural barriers. Consequently, individuals in need often fail to seek legal aid promptly, allowing legal issues to escalate and exacerbate their plight.<sup>5</sup> Moreover, lack of awareness not only affects individuals but also weakens the societal fabric. Communities that lack legal awareness are susceptible to exploitation and manipulation. They become fertile ground for unscrupulous practices, leading to social injustices that could have been mitigated through legal intervention. In essence, ignorance about legal rights perpetuates cycles of poverty, discrimination, and systemic injustice.

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<sup>5</sup> *Id.*



### **iii. Impact on Legal Aid Programs: Strained Resources and Ineffective Assistance**

The challenges of illiteracy and lack of awareness place immense pressure on legal aid programs. Limited resources are stretched thin, as significant efforts are required to bridge the knowledge gap and provide accessible legal aid services. Legal aid providers find themselves spending substantial time and resources on basic legal education, diverting attention away from the core task of providing legal assistance.<sup>6</sup> Additionally, the lack of awareness and understanding among beneficiaries often leads to inefficient utilization of legal aid services. Clients might not accurately communicate their problems, hindering the legal aid provider's ability to offer tailored solutions. Moreover, illiteracy inhibits the documentation process, making it challenging to maintain accurate records and track the impact of legal aid interventions.

### **iv. Strategies to Overcome Illiteracy and Lack of Awareness**

Addressing illiteracy and lack of awareness requires multifaceted strategies that are both proactive and

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<sup>6</sup> Aribba Siddique, *Legal Aid: A Social Service Well-Intentioned on Paper but Riddled with Concerns on The Ground*, MANUPATRA (Oct. 18, 2023, 10:15 PM), <https://articles.manupatra.com/article-details/legal-aid-a-social-service-well-intentioned-on-paper-but-riddled-with-concerns-on-the-ground>.

sustainable. Adult literacy programs tailored to legal contexts are indispensable. These programs should focus not only on basic reading and writing skills but also on legal terminologies and procedures. By improving literacy skills, individuals can gain the confidence to engage with legal aid providers effectively. Furthermore, community-based awareness campaigns are vital to disseminate information about legal rights and available legal aid services. These campaigns should employ diverse mediums, including workshops, pamphlets, radio broadcasts, and social media platforms, to reach a wide audience. Collaboration with local leaders, educators, and grassroots organizations can enhance the effectiveness of these awareness initiatives, ensuring that the information resonates with the communities in need.<sup>7</sup>

Utilizing technology also presents an opportunity to overcome these challenges. Mobile applications and interactive online platforms can provide easily understandable legal information in multiple languages, breaking down complex legal concepts into digestible pieces of information. Such technology-driven solutions not only bridge the gap for illiterate individuals but also cater to the tech-savvy younger generations, fostering legal awareness

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<sup>7</sup> KALPESHKUMAR L GUPTA, *LEGAL AID & AWARENESS IN INDIA: ISSUES AND CHALLENGES* 54 (Lambert Academic publishing 2018).

from an early age. Legal aid programs, in collaboration with educational institutions, community leaders, and technology innovators, can transform the landscape of legal awareness. Through sustained efforts, societies can break the shackles of illiteracy and ignorance, fostering a more just and equitable environment where every individual, regardless of their background, can navigate the legal system with confidence and dignity. Empowering individuals through knowledge is not just a step toward enhancing legal aid effectiveness; it is a stride toward a fairer and more enlightened society for all.

#### **IV. BARRIERS TO LEGAL AID: ILLITERACY AS A PERVASIVE CHALLENGE**

In the pursuit of justice, legal aid programs serve as the bedrock of support for individuals who lack the means to navigate the complexities of the legal system. However, these programs face a multitude of barriers that impede their efficacy, one of the most pervasive being illiteracy. Illiteracy, the inability to read and write proficiently, creates a significant divide between legal aid services and those who need them the most.<sup>8</sup> This essay delves into the profound impact of illiteracy as a barrier to legal aid, examining the challenges it poses and exploring the far-reaching

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<sup>8</sup> SAHITHI REDDY, *Legal Aid and Awareness in India: Issues and Challenges*, LAWYERSCLUBINDIA (Oct. 19, 2023, 08:15 PM), [https://www.lawyersclubindia.com/articles/legal-aid-and-awareness-in-inida-issues-and-challenges--15950.asp\\_](https://www.lawyersclubindia.com/articles/legal-aid-and-awareness-in-inida-issues-and-challenges--15950.asp_)

consequences on the accessibility and effectiveness of legal aid programs.

### **i. Illiteracy as a Barrier to Legal Aid: A Complex Challenge**

Illiteracy serves as a multifaceted barrier to legal aid, affecting various aspects of the legal process. The inability to read legal documents and comprehend legal terminologies hampers an individual's capacity to understand their rights, obligations, and the legal procedures involved in their case. This lack of comprehension creates a substantial gap between the legal aid providers and the beneficiaries, hindering effective communication and impeding the process of legal representation. Furthermore, illiteracy erodes an individual's confidence in engaging with legal authorities. Illiterate individuals often feel intimidated and disempowered when confronted with the legal system, leading to a reluctance to seek legal aid even when they are aware of its existence. This lack of confidence perpetuates a cycle of vulnerability, as illiterate individuals are less likely to assert their rights and actively participate in their legal proceedings.

### **ii. Impact on Legal Aid Services: Strained Resources and Limited Reach**

The impact of illiteracy on legal aid services is profound and multifaceted. Legal aid providers are compelled to invest significant resources in basic

literacy education, diverting their attention and limited resources away from providing substantive legal assistance. Time that could be spent on addressing complex legal issues is often allocated to teaching basic literacy skills, leading to a strain on the resources of legal aid organizations. Moreover, illiteracy limits the reach of legal aid services. Illiterate individuals face challenges in filling out forms, understanding legal notices, and communicating effectively with legal aid providers. As a result, legal aid organizations find it difficult to engage with illiterate populations, leaving a substantial portion of those in need without the vital assistance they require. The inability to reach these individuals exacerbates their vulnerability, perpetuating the cycle of poverty and marginalization.<sup>9</sup>

### **iii. Strategies to Mitigate the Impact of Illiteracy on Legal Aid**

Addressing illiteracy as a barrier to legal aid requires a multifaceted approach that integrates education, technology, and community engagement. Adult literacy programs tailored to legal contexts play a pivotal role. These programs should focus not only on basic reading and writing skills but also on legal

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<sup>9</sup> *Addressing the Access to Justice Gap: Challenges and Strategies in Legal Aid Provision*, LINKEDIN (Oct. 19, 2023, 09:00 PM), <https://www.linkedin.com/pulse/addressing-access-justice-gap-challenges-strategies-legal/>

terminologies and procedures. By equipping individuals with basic legal literacy, these programs empower them to comprehend their rights, understand legal documents, and engage more effectively with legal aid services.<sup>10</sup>

Technology also offers innovative solutions to mitigate the impact of illiteracy on legal aid. Interactive mobile applications and online platforms can provide audiovisual content, simplifying complex legal concepts and procedures. These tools cater to various learning styles, ensuring that illiterate individuals can access legal information in a format that suits their abilities. Additionally, helpline services staffed by legal experts can offer telephonic assistance, guiding illiterate individuals through legal processes and providing them with the necessary support. Community engagement plays a crucial role in overcoming illiteracy-related challenges. Legal aid organizations can collaborate with local communities, NGOs, and grassroots organizations to conduct awareness campaigns and workshops. These initiatives can be tailored to address specific legal issues prevalent in the community, ensuring that the information provided is relevant and impactful. Additionally, involving local leaders and influencers can enhance the credibility

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<sup>10</sup> Beejal Ahuja, *Challenges and solutions to free legal aid*, IPLEADERS (Oct. 19, 2023, 09:15 PM), <https://blog.ipleaders.in/challenges-solutions-free-legal-aid/>.

and effectiveness of these awareness programs, encouraging illiterate individuals to trust and engage with legal aid services.

#### **iv. Empowering the Illiterate Population through Legal Literacy**

By empowering the illiterate population with legal literacy, societies can bridge the gap between legal aid services and those in need. Education and awareness create a pathway for illiterate individuals to understand their rights, engage with legal aid providers, and actively participate in their legal proceedings. In doing so, not only do legal aid programs become more accessible and effective, but the fundamental principles of justice, equality, and empowerment are upheld, ensuring that the most vulnerable members of society are not left behind in the pursuit of a just and equitable world.<sup>11</sup>

### **V. STRATEGIES TO PREVAIL OVER ILLITERACY: EMPOWERING THROUGH EDUCATION AND INNOVATION**

Addressing illiteracy as a barrier to accessing legal aid requires a comprehensive and innovative approach that combines education, technology, and

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<sup>11</sup> NATIONAL LEGAL LITERACY MISSION, BHARATIYA VIDHI SANSTHAN.

(Oct. 20, 2023, 11:15 AM), [http://www.bharatiyavidhisansthan.org/Legal\\_Litracy.aspx](http://www.bharatiyavidhisansthan.org/Legal_Litracy.aspx)

community engagement. Here are several strategies to prevail over illiteracy and empower individuals with the necessary knowledge and skills to engage effectively with legal aid services:

**a. Tailored Adult Literacy Programs:** Implement targeted adult literacy programs specifically designed to impart basic reading, writing, and numeracy skills within a legal context. These programs should incorporate legal terminologies and essential legal concepts, enabling individuals to comprehend legal documents and understand their rights and responsibilities.

**b. Interactive Learning Tools and Mobile Applications:** Develop user-friendly mobile applications and interactive online platforms that provide audiovisual content and simplified legal information. Utilize animations, videos, and voice instructions to convey legal concepts in an easily understandable manner. These tools should cater to various learning styles and languages, ensuring accessibility for diverse populations.<sup>12</sup>

**c. Community-Based Learning Centers:** Establish community-based learning centers equipped with trained educators and digital resources. These

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<sup>12</sup> Satyam Sah, *Innovation in Legal Aid: How Technology is Making Justice more Accessible*, BRILLOPEDIA (Oct. 20, 2023, 11:15 AM), <https://www.brillopedia.net/post/innovation-in-legal-aid-how-technology-is-making-justice-more-accessible>.



centres can provide literacy classes, legal education workshops, and access to online legal resources. By integrating legal education into community learning spaces, individuals can acquire both literacy skills and essential legal knowledge in a supportive environment.<sup>13</sup>

**d. Telephonic Helpline Services:** Set up helpline services staffed by legal experts who can provide telephonic assistance to illiterate individuals. These helplines can guide individuals through legal processes, answer queries, and offer step-by-step instructions in a language they understand. Telephonic support ensures immediate access to legal information for those who cannot read written materials.

**e. Partnerships with NGOs and Educational Institutions:** Collaborate with non-governmental organizations (NGOs) and educational institutions to expand the reach of literacy programs. NGOs often have grassroots connections and can facilitate community outreach initiatives. Educational institutions, on the other hand, can contribute resources, expertise, and volunteers to support adult literacy efforts within legal contexts.

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<sup>13</sup> *Engaging with Communities for Access to Justice*, E-PG PATHSHALA (Oct. 20, 2023, 11:15 AM), [http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/Law/02.\\_Access\\_to\\_justice/17.\\_Engaging\\_with\\_Communities\\_for\\_Access\\_to\\_Justice/et/5643\\_et\\_17ET.pdf](http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/Law/02._Access_to_justice/17._Engaging_with_Communities_for_Access_to_Justice/et/5643_et_17ET.pdf).

## VI. ADDRESSING LACK OF AWARENESS OF LEGAL RIGHTS: FOSTERING LEGAL LITERACY THROUGH OUTREACH AND ADVOCACY

Lack of awareness of legal rights is a significant barrier to accessing legal aid. Overcoming this challenge requires strategic efforts in legal literacy campaigns, community outreach, and advocacy.<sup>14</sup> Here are several approaches to enhance awareness of legal rights:

**a. Legal Awareness Campaigns:** Organize targeted legal awareness campaigns in communities, schools, and public spaces. These campaigns should focus on fundamental legal rights, common legal issues, and available legal aid services. Utilize multimedia tools, including posters, pamphlets, videos, and social media, to disseminate information widely.

**b. Workshops and Seminars:** Conduct workshops and seminars on legal rights, emphasizing specific topics such as family law, labour rights, or tenant rights. These events can include presentations by legal experts, interactive sessions, and Q&A sessions. Workshops tailored to the needs of specific

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<sup>14</sup> *Absence of legal awareness root cause of rights' deprivation*, BUSINESS STANDARD (Oct. 20, 2023, 11:30 AM), [https://www.business-standard.com/article/pti-stories/absence-of-legal-awareness-root-cause-of-rights-deprivation-119081800664\\_1.html](https://www.business-standard.com/article/pti-stories/absence-of-legal-awareness-root-cause-of-rights-deprivation-119081800664_1.html).

communities can address pertinent legal issues faced by those populations.

**c. Outreach Programs in Underserved Areas:**

Target underserved areas with specialized outreach programs. Legal aid providers, in collaboration with community organizations, can organize mobile legal clinics in remote villages, urban slums, and marginalized communities. These clinics offer free legal consultations, enabling individuals to discuss their concerns with legal experts directly.

**d. School-Based Legal Education Programs:**

Integrate legal education into school curricula, teaching students about their rights, responsibilities, and the functioning of the legal system. By educating the younger generation, societies can create a foundation of legal awareness, ensuring that future generations are well-informed about their legal rights and avenues for legal support.

**e. Strengthening Community Networks:** Empower local community leaders, social workers, and educators with legal knowledge. These individuals can act as advocates within their communities, disseminating legal information, addressing concerns, and guiding community members to appropriate legal aid services. Strengthening

community networks creates a sustainable framework for ongoing legal awareness efforts.<sup>15</sup>

Through these strategies, barriers to justice can be dismantled, creating a more equitable and informed society for all.

## **VII. LEGAL AWARENESS**

Legal Awareness means that every individual should possess the knowledge and understanding of the law. It entails to educate people about the law, its applicability and the conception of the rule of law. Legal Awareness is also known as Legal Consciousness. A person can claim justice only when he is acquainted with what is unjust and just as per the law. An Individual should have an elemental understanding of the law and his responsibilities and rights which would in turn empower the individuals to preserve and safeguard their rights. By virtue of Article 39A of the Constitution of India, inserted by 42<sup>nd</sup> Amendment, 1976, the State is under an obligation to ensure justice for all citizens and provide free legal aid. Legal Awareness expands the knowledge and understanding about the legal remedies and rights which would help in access to justice specifically for oppressed communities such

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<sup>15</sup> *Legal Awareness*, ACADEMIC ACCELERATOR (Oct. 21, 2023, 04:30 PM), <https://academic-accelerator.com/encyclopedia/legal-awareness>.

as children and women as they have to face many hurdles for legal support.

70% of the people in the rural area are unaware of the rights granted to them by the law due to lack of legal awareness. Due to lack of legal awareness, they are not able to utilize the benefits of the government schemes and plans.<sup>16</sup>

### **Importance of Legal Awareness –**

1. It empowers the people by providing and educating them about their rights and responsibilities which helps them to take appropriate actions to protect and shield themselves legally.
2. By making the people aware of the legal rights available to them the probability of access to justice is enhanced.
3. When people are aware of their responsibilities and rights, they are prevented from being exploited by anyone.
4. When a nation or a society is legally aware it is more likely to be just, stable and operate within a legal framework which will lead to the Nations Development.<sup>17</sup>

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<sup>16</sup> Ekta Shukla, Law, Poverty And Development 90 – 97 (Singhal's 2016 – 17).

<sup>17</sup> UNACADEMY,  
<https://unacademy.com/content/upsc/study-material/law/legal-aid/> (last visited Oct 25, 2023)

### **VIII. LEGAL AID CAMPS**

Legal aid camps play a very important role in increasing the legal awareness in rural areas by narrowing the gap between the legal resources and the community. These legal aid camps bring legal expertness straight to the doorsteps of the individuals who face obstacles in retrieving assistance and information.<sup>18</sup> By the way of sessions, workshops and informative material, these camps vest the individuals with awareness and realization of their rights and responsibilities under the law. Legal aid camps help to throw some light on the complex legal scenery, making it easier to understand for the people of rural areas. Further, these camps simplify the resolving of common legal disputes or issues by assisting guidance on elucidating the relevant laws, disputes, issues and even providing free legal advice with legal professionals. Legal aid camps solve legal issues and disputes as well as it also helps in contributing for a viable impact by promoting the legal literacy programs which is a foundation of trust and understanding in the legal system with the rural people and communities. These legal aid camps act as an impetus for a positive legal awareness, ensuring that people in rural areas are well versed

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<sup>18</sup> Sahithi Reddy, Legal Aid and Awareness in India: Issues and Challenges, LAWYERSCLUBINDIA (Oct. 29, 2023, 7:05 PM), <https://www.lawyersclubindia.com/articles/legal-aid-and-awareness-in-inida-issues-and-challenges--15950.asp>.

with the resources and knowledge to sail across the legal perspective efficiently.<sup>19</sup>

## **IX. CHALLENGES PERSISTING IN RAISING AWARENESS IN LEGAL AID**

Lack of awareness of the existence of legal aid is one of the factors of a weak institutional system. The accused person is unaware of his or her right to legal representation. The legal service authorities do not have ample lawyers and even though some are appointed they are not able to offer adequate support.

The lawyers are less committed to these cases as the compensation received by lawyers for the services is so scanty that they are not able to cover their own expenditure. Some lawyers ask for payment of extra fees even though states pay for their expenditure. The State budgets and the National Legal Services Authority both grants' funds to the legal service organisations.

The NALSA (Legal Services Clinics) Regulations 2011 mandates situating one legal aid clinic in each village or for a group of villages.<sup>20</sup>

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<sup>19</sup> KALPESHKUMR L. GUPTA, VIRALKUMAR B. MANDALIYA (Eds.), *LEGAL AID & AWARENESS in India: Issues & Challenges* 67 – 71 (Lambert 2017).

<sup>20</sup> Aribba Siddique, *Legal Aid: Social Service Well – Intentioned on Paper but riddled with concerns on the ground*, MANUPATRA (Oct. 29, 2023, 9:30 PM), <https://articles.manupatra.com/article-details/LEGAL-AID-A->

Lok Adalat's are the most innovative system enlarged with the purpose and scope of providing free legal aid and assure equality of justice. It has powers similar to an ordinary civil court. It cannot compel the party to the dispute to appear for the proceedings. A lot of times one of the parties to the dispute does not appear for the proceedings due to which there is delay in the disposal of the case.

Para – legal volunteers help in promoting legal aid schemes, camps and to reach to the weaker sections of the society to make them aware of their rights and responsibilities. Para – legal volunteers are less in number and these Para – legal volunteers lack proper training, verification, monitoring.<sup>21</sup>

## **X. CONCLUSION AND RECOMMENDATIONS**

In the discourse surrounding legal aid, the barriers of illiteracy and lack of awareness have emerged as formidable challenges, casting shadows on the path to justice for countless individuals. The profound impact of illiteracy, impeding comprehension of legal processes and communication with legal aid providers, coupled with the pervasive lack of

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SOCIAL-SERVICE-WELL-INTENTIONED-ON-PAPER-BUT-RIDDLED-WITH-CONCERNS-ON-THE-GROUND.

<sup>21</sup> Beejal Ahuja, *Challenges and Solutions to free legal aid*, IPLEADERS (Oct. 30, 2023, 6:00 PM), [https://blog.ipleaders.in/challenges-solutions-free-legal-aid/#Issues\\_and\\_challenges](https://blog.ipleaders.in/challenges-solutions-free-legal-aid/#Issues_and_challenges).



awareness about legal rights, creates a landscape where access to justice remains elusive for many.

Despite these challenges, our exploration has illuminated promising strategies to prevail over illiteracy and foster legal awareness. Tailored adult literacy programs, innovative learning tools, community-based initiatives, and targeted outreach campaigns have demonstrated their potential to empower individuals with the knowledge and skills necessary to navigate the legal landscape effectively.

## **Recommendations**

1. Continued Investment in Adult Literacy Programs: Governments, NGOs, and educational institutions should continue to invest in and expand adult literacy programs tailored to legal contexts. These programs should be comprehensive, addressing not only basic reading and writing skills but also legal terminologies and procedural knowledge.
2. Technological Innovation for Legal Literacy: The development and dissemination of user-friendly mobile applications, online platforms, and telephonic helpline services should be prioritized. Leveraging technology ensures that illiterate individuals can access legal information in a format that suits their abilities, breaking down the barriers imposed by traditional written materials.

3. Collaborative Partnerships: Legal aid organizations, community leaders, NGOs, and educational institutions should form collaborative partnerships to amplify the impact of legal literacy initiatives. By pooling resources, expertise, and networks, these partnerships can create a synergistic approach to overcoming barriers and promoting legal awareness.
4. Community Empowerment: Strengthening community networks is pivotal. Community leaders, educators, and local influencers should be empowered with legal knowledge to act as advocates within their communities. This grassroots approach fosters sustainable, community-driven legal awareness efforts.
5. Integration of Legal Education in Schools: Governments should consider integrating legal education into school curricula. By educating the younger generation about their rights and the legal system, societies can create a foundation of legal awareness that permeates future generations.
6. Targeted Outreach Programs: Legal aid providers should conduct targeted outreach programs in underserved areas. Mobile legal clinics, workshops, and seminars can bring legal aid services directly to those who need them most, fostering a culture of legal awareness in marginalized communities.

In conclusion, prevailing over the barriers of illiteracy and lack of awareness is not only a societal imperative but a moral obligation. By adopting these recommendations and sustaining collective efforts, societies can dismantle the obstacles that impede access to justice. In doing so, we pave the way for a more just, equitable, and informed society, where legal aid is not merely a service but a tangible manifestation of the principles that underpin the democratic fabric of our collective existence: justice, equality, and the empowerment of all individuals, regardless of their literacy or awareness levels.

## Chapter - 9

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# **THE RELEVANCE OF LEGAL AID SERVICES IN JUSTICE DELIVERY SYSTEM: AN ABSTRACTION**

Dr. Monmi Gohain\*

### **Abstract**

Litigation and the right to litigation is one of the justifiable expectations of people as citizens of any country. The protection and enforcement of rights of people through litigation should be upheld by the justice delivery system in any country. Proper methods for the same will signify the rule of law being established in the society. It also means that the justice delivery system should be accessible to one and all in the society, irrespective of their socio-economic status. At this juncture, well established legal aid services system can make justice accessible to all. Nonetheless, the enforcement of right to legal services is still a challenge in our country, the reason being the disparities in socio-economic amenities, the lack of awareness about the means of access to justice, etc. This has resulted in denial of justice to a large section of people. It is high time that we realise the fact that legal assistance is the responsibility of

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people for the benefit of the people. This is possible when legal aid services coincide with the idea of providing service to the people and build a nation.

**Keywords:** Litigation, Rule of Law, Accessibility of Justice, Legal aid services, Nation Building

## **I. INTRODUCTION**

Litigation and the right to litigation is the root of nation building. Litigation includes service providers and service seekers. Litigation services are in scattered various levels in the society is also in hierarchy depending upon the nature of litigation. People approach the courts or other forms justice delivery systems for seeking legal services. The fact that the courts of each and every country is flooded with cases puts light on the fact that people want to access justice and preserve their rights.<sup>1</sup> The approach of the people to have access to justice comes from the faith of the people on the concept of rule of law. It has certain limits<sup>2</sup> depending upon availability of means to access justice. There is a belief of the people that the courts will prevent the violation of rights and preserve the concept of equality, justice and morality by providing them access to justice. The limitation of the concept of rule

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<sup>1</sup> V. Venkatesan, Dimensions of legal aid, published in Law, Poverty and Legal Aid: Access to Criminal Justice by Muralidhar; LEXIS NEXIS (New Delhi).

<sup>2</sup> *Id.*

of law is that everyone is equal before law but access to justice is not based on this principle. To some justice is easily available and to some justice is not easily accessible. This results in the denial of justice to some people who cannot access the same.

The enforcement of right to legal services is still a challenge in our country, from the time of independence and continues today. The social hierarchy, the disparities in socio-economic amenities, the lack of awareness about the means of access to justice, etc., has contributed to the same. Till many years after independence, it was not felt that it is the responsibility of the state to provide legal assistance to those victims who did not have enough means to approach the justice delivery system. This resulted in denial of justice to a large section of people in our country. Realising this grave situation, many eminent scholars and jurists, through various committees and reports, insisted to the government of formalising and implementing the responsibility of the state to provide legal aid services. This led to the formulation of the system of providing the free legal to the people. It was included in the Constitution of India as one of the directive principles of state policy to provide free legal aid as a legal to the people who cannot afford or who have limited means to afford legal services.

## II. LEGAL AID: THE CONCEPT

“Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favour or of grace or of discretion.” - Justice. Wiley Rutledge (US. SC)

The idea of Legal aid is derived from the concept of access to justice. Justice, on the other hand, can be accessed if there are proper and appropriate means to it. The term ‘proper means’ is very relative as it is determined by various factors. The socio-economic condition, the education and the amount of awareness which an individual, the desire to get justice, etc generally determines the means to have access to justice. Owing to these, some individuals might have greater access to justice and some may not have.

The legal aid also denotes the right of an individual to have an access to remedy. This is derived from the principle of Roman Law “*ubi jus ibi remedium*” which means where there is a right there is a remedy. Adequate remedy is again depended on the justice delivery system. Justice delivery is the obligation which is cofired upon the state to one and all present in the society, guided by the law of the state. The state has to function on the basis of rule of law to preserve peace and tranquillity in the society. This includes provide equal opportunities to justice for the preservation of rights of the people.

In this regard, Justice P.N. Bhagwati rightly observed that, “ The legal aid means providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law, the poor and 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. Legal aid should be available to the poor and illiterate, who don’t have access to courts. One need not be a litigant to seek aid by means of legal aid.”<sup>3</sup>

The United Nations Human Right Council (HRC) stated that legal aid should be a vital part of the justice delivery system of any country as it ensures fair, humane and efficient system of administration of justice based on the rule of law. It further states that it is important for the countries to develop a system which has within it effective and sustainable legal aid which is available at all stages of justice delivery system in accordance with international human rights law.<sup>4</sup>

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<sup>3</sup> Sripriya T, *Legal Aid and Awareness in India: Issues and Challenges*, LEGAL SERVICE ONLINE, (14<sup>th</sup> November,2024,11.05 A.M),

[https://legalserviceindia.com/lawyers/lawyers\\_home.htm](https://legalserviceindia.com/lawyers/lawyers_home.htm).

<sup>4</sup> U.N. Human Rights Council. Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut, (26<sup>th</sup> September,2024,9.10 AM),



### **Elements of legal aid:**

- a. Equality of opportunity for justice: The concept of equality is seldom defined properly. Equality is one of the basic pillars of democracy. When the American Declaration of Independence was issued on July 4<sup>th</sup> 1776, it was stated that “We hold the truths to be self-evident that all men are created equal.”<sup>5</sup> After the French Revolution, it was stated in Declaration of Rights of Man, 1789, that “Men are born free and always continue to be free and equal in respect of their rights”.<sup>6</sup> So in various landmark developments in the eve of modernization, the concept of equality and its importance has been emphasized for an individual to be the part of the society.
- b. Preservation of the system rule of law: The concept of rule of law is that state is governed not by the ruler or a group of representatives but by the supreme authority of law.<sup>7</sup> Law

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<http://daccessddsny.un.org/doc/UNDOC/GEN/G13/119/35/PDF/G1311935.pdf?OpenElement>.

<sup>5</sup> American Declaration of Independence, Equality (meaning, dimensions and relationship between Liberty and Equality), DAV University Study Material, (10<sup>th</sup> October, 2024, 12.45 PM) [https://www.davuniversity.org/images/files/study-material/Equality\(meaning,%20dimensions%20and%20relationship%20between%20Liberty%20and%20Equality%20\).pdf](https://www.davuniversity.org/images/files/study-material/Equality(meaning,%20dimensions%20and%20relationship%20between%20Liberty%20and%20Equality%20).pdf).

<sup>6</sup> *Id.*

<sup>7</sup> Alok Kumar Yadav, *Rule of Law*, Volume 4 Issue 3, INTERNATIONAL JOURNAL OF LAW AND LEGAL JURISPRUDENCE STUDIES.

signifies a uniformity of governance upon the governed. Rule of law denotes the responsibility of the state as a good care taker of the rights of one and all in the society, within a plethora of rights and obligations.

- c. Access to Justice: The reason behind the concept of legal aid is giving access to justice to all the people in the society. Access to justice means the ability of the people to seek and obtain a remedy through the institutions of justice according to standards of protection of rights.<sup>8</sup> Access to justice does not mean providing justice for the sake of it but justice according to the established norms set up by the law makers which are available to all. Pure idea of access to justice cannot inculcate discrimination for certain group of people in the society.
- d. Impartial Judicial System: Proper justice delivery requires appropriate institutions. The principle of impartial judicial system means that the institutions which deliver justice to the people should not be prejudiced in the consideration of the individual seeking justice

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<sup>8</sup> Alan S. Gutterman, *what is Access to Justice*, RESERACHGATE, (10<sup>th</sup> October, 2024, 2.30 PM) [https://www.researchgate.net/publication/359033682\\_What\\_is\\_Access\\_to\\_Justice#:~:text=orientation%E2%80%9D,Another%20definition%20of%20access%20to%20justice%20focuses%20on%20the%20ability,legal%20protection%2C%20legal%20awareness%20and](https://www.researchgate.net/publication/359033682_What_is_Access_to_Justice#:~:text=orientation%E2%80%9D,Another%20definition%20of%20access%20to%20justice%20focuses%20on%20the%20ability,legal%20protection%2C%20legal%20awareness%20and).

and depending upon the situation in which the individual is. There should not be any stake or interest of the judicial service provider in the case or the individual and do not hold any pre-informed opinion in the respective case.<sup>9</sup>

- e. Protection of individual liberties: The concept of protection of individual liberty implies that every human individual as a sovereign body as a so seeks to have protection against violations of individual liberty and despotic power.<sup>10</sup> This is so very important in case of providing legal aid because people with limited means and limited information cannot be exploited in the name of providing legal aid. It should carry the idea of upholding individual liberty from people in power.

### **III. LEGAL AID AND THE PRINCIPLE OF FREE AND FAIR TRIAL**

The principle of fair trial is explained at this juncture as the expansion of the powers of the state to provide justice to those who do not have access as a victim of

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<sup>9</sup> Abdalrazak Alsheban, *Judicial Impartiality and Independence of the Judiciary (Comparative Study)*, Volume 22 JOURNAL OF HUMANITIES AND SOCIAL SCIENCE (IOSR-JHSS), Issue 5, 37-44.

<sup>10</sup> Regina Queiroz, *Individual Liberty and The Importance of The Concept of The People*, PALGRAVE COMMUNICATIONS, Article No.99, (2018), (10<sup>th</sup> October, 2024, 3.10 PM), <https://www.nature.com/articles/s41599-018-0151-3>.

a crime or offence and also to the people who commit the crime or offence. Legal aid cannot be biased towards the victims as a matter of right, but also available to the accused. Giving justice to the people who do not have the same at the expense of the state becomes an important aspect of the principle of fair trial. It also ensures that people should be informed about the extent of the rights and availability of legal services in realisation of their rights. So, it should be the duty of the state to spread awareness and strive towards making the people well informed about facilities which they can seek in an uniform and unbiased manner. The principle of free trial is also inclusive of free and prompt trials for the seekers of justice from the government.<sup>11</sup>

The principle of free and fair trial also ensures that the law which governs the delivery of legal services in the society should have some connection with social justice. There should be free access to justice to everyone without any discrimination and biasness. In addition to that the administration and the rules of the justice delivery system should be moulded according to the legal literacy prevalent among the justice seekers. There should be a positive ratio between the two. This can be achieved if there are appropriate methods devised for increasing awareness and removal of legal incompetence among the people.

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<sup>11</sup> *Id.*

#### **IV. INTERNATIONAL HUMAN RIGHTS LAW AND CONCEPT OF FREE AND FAIR TRIAL**

The International Human Rights law, right from its very inception has within its ambit the idea of free and fair trial. It has been stated that right to free and fair trial involves equality before law and the right to seek for grievance.<sup>12</sup> Such a system will not have a value for those section of people who cannot seek justice on the account of socio-economic inability. This has been a concern for the justice providers under international human rights law. Some of the specifics provisions are stated as under:

- a. UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems: The adoption of the Principles and Guidelines on access to Legal Aid in Criminal Justice Systems by the UN General Assembly in the year 2012, was a pioneer development in establishing certain standards of providing legal aid in the criminal justice system all across the world. These principles state that the system of providing legal aid should be accessible, sustainable, credible and effective.

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<sup>12</sup> *The Right Legal Aid- A Guide to International Law Rights to Legal Aid*, LAWYERS RIGHTS WATCH CANADA (LRWC) [2014] ISBN: 978-0-9939149, (27<sup>th</sup> September, 2024) <https://www.lrwc.org/ws/wp-content/uploads/2014/09/International-Rights-to-Legal-Aid-w-clean-covers.pdf>.

Additionally, it states that the justice delivery system should be prompt and effective in all stages. It defines legal aid as legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require.<sup>13</sup>

- b. Universal Declaration of Human Rights (UDHR): The UDHR is the basis of establishment of international human rights law and international principles of access to justice and fair trial. Article 10 of the UDHR states that there is equality of every person of fair and public hearing by any court or tribunal.
- c. International Covenant on Civil and Political Rights (ICCPR): Article 14 of the ICCPR states that all the persons should be equal before courts and tribunals. Further, it states that if a person does not have legal assistance, such legal assistance should be provided to him/her. This article also highlights about free legal assistance when it states that a person

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<sup>13</sup> *Supra* note 11.

can avail legal assistance without payment, if he or she does not have sufficient means of payment.

- d. Vienna Convention on the Law of Treaties: This Convention puts light on the fact that all the states are bound by the treaty obligation on the principle of good faith. Article 27 of this Convention states that a state party may not invoke the provisions of internal law as a justification of failure to invoke the provisions of a treaty. This means that the countries have an obligation to not to obstruct justice and grant access to justice to its citizens at all levels.

## **V. EVOLUTION OF THE CONCEPT OF FREE LEGAL AID IN INDIA:**

Immediately after attainment of independence, the socio-economic situation of our country was not as desired. It was felt to be highly undeveloped. A development strategy was formulated by the government which aimed at forming socialistic pattern of the society inclusive of politico-economic development, social justice and poverty alleviation. This idea was inclusive of the concept of equal opportunity of people as a member of the society. This was not achieved until many decades. Hence it happened that the poor became poorer and the rich became richer and it created a rift in the society. This

has also a drastic impact on the access of justice delivery system by the people in the sense that access to justice depended on the socio-economic condition of the people. There was a necessity felt to provide access to justice to increasing economically marginalised and vulnerable sections of litigants, indigent prisoners and other people who had limited means of access to justice.<sup>14</sup>

The first efforts of formalising the concept of providing free legal aid to the poor and the needy people in India started in the 1924 when a legal aid society was formed in Bombay. In the year 1944, a committee under the chairmanship of Lord Rushcliffe was formed to look into what type of legal aid services existed in England so that they could be implemented in India. There were various important recommendations of this Committee such as in place of poor person, assisted person should be used, adequate remuneration should be provided by the state who are providing free legal assistance, the cost of the assistance should be directly borne by the state rather than as a department of the state or a local authority.

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<sup>14</sup> It was stated in the opening speech of Mr. Justice (Retd.) Brojendra Prasad Katakey, in Legal Services in Assam: Vision, Deficiencies and Rectification A Report Consultation Meet organised by Studio Nilima: Collaborative Network for Research and Capacity Building in collaboration with Assam State Legal Services Authority Guwahati, March 30, 2012.



## **VI. CONCEPT OF LEGAL AID DURING THE BRITISH PERIOD**

During the British Period, there was a mandate to provide legal assistance to the people who were under a disability to seek appropriate justice by themselves. This was due to the fact that the Britishers were exposed the global developments and wanted the same to be implemented in India.

In the year 1833, the Charter Act of 1833 was passed. This Act dealt with codification of the process of law in British India. It also asserted the sovereignty of the Crown over the British possessions in India. The Act also brought remarkable changes in the administration of the Indian society at that time and some attention was also paid towards improving the law and order in the society. So, some attention was also given towards improving the methods of providing justice to the people.

## **VII. CHANGING DIMENSIONS OF LEGAL AID AFTER INDEPENDENCE**

Committee on Legal Aid and Advice, 1949: This committee emphasized on the legal aid to be based on access to justice to persons of limited means and persons belonging to backward classes and making justice more accessible to all. It stated that Legal aid should be given to the victims as well defendants or the respondents. It also focused on certain tests to be

carried out before providing legal aid to the persons such as:

- a. Means Test which implies that the socio-economic condition of the individual seeking justice should be analysed see if the individual do not have the minimum means to seek justice.
- b. Prima facie case test which implies that when the individual seeks legal aid it has to be seen that the matter approached for comes within the limits of providing legal aid.

The Law Ministers Conference was held in the year 1957 to look into the prospects of legal services in India. The primary motto of this conference was to emphasize that each state should formulate a legal aid scheme for the poor which should be executed by forming committees at different levels monitored by the Ministry of law. The importance of monitoring to make legal services delivery system more effective was emphasized by this conference.

In the year 1958, the Law Commission of India had published various reports since its inception and one of the important reports regarding the legal aid services was the Fourteenth Report which stated that providing legal aid to the poor litigants should not be considered as a minor problem but should be considered as fundamental to the common people of the country. It should not be considered merely as a procedural issue. This report further stated that

providing legal aid to the poor and the persons of limited means is a service which the modern state owes to the citizens. It also stated that providing free legal aid to the people should be taken as a responsibility by the legal professionals and should be discharged by various bodies. This responsibility is in the furtherance of moral obligation.

### **VIII. INTERNATIONAL COMMISSION OF JURISTS, 1959**

A committee on 'judicial and legal profession under the rule of law' was formed by Congress of International Commission of Jurists which was held in New Delhi, made a remarkable point that that state has an obligation to provide legal aid to those who are unable to pay for it and it should be under the purview of the rule of law.

### **IX. THE CENTRAL GOVERNMENT SCHEME, 1960**

This Scheme talked about the legal as a statutory right of the people who could not afford the same. The scheme was not welcomed by the state government as they stated they were unable to bear the financial responsibility involved in the scheme. With the coming of the Commission for Scheduled Caste and the Scheduled tribes, special attention was given to the Scheduled Caste and the Scheduled tribes and it was stated that legal was also important for them as

they were very much low in the socio- economic set up.

In the furtherance of this scheme, in the year 1980, a committee known as Committee for Implementing Legal Aid Schemes (CILAS), was constituted under the chairmanship of Hon. Mr. Justice P.N. Bhagwati to start legal aid services throughout the country. The Committee headed by Justice V.R. Krishna Iyer stated that it is very important to make legal aid available to the weaker sections of the society and the persons with limited means in order to make them aware of their legal and constitutional rights, for the avoidance of vexatious and unnecessary litigation and hence forth recommend a legal aid scheme for the same.

## **X. LEGAL AID AND THE CONSTITUTION OF INDIA**

Keeping regards to the report of the various Committees, views of various experts in different countries, judicial activism of the Supreme Court of India in providing justice and free legal aid and the effort of the state in achieving socio-economic goals in the country, the concept of legal aid was given a statutory expression by the Government of India. This was more possible because of the report of Swaran Singh Committee recommendations and the 42<sup>nd</sup> Amendment. The Constitution of India itself provides the mandate of legal aid services owing to the socio-economic condition of certain class of

people in India. This is in the furtherance of the idea of fairness, justice and equity and so that nobody is deprived of the same.

The idea of providing free Legal Aid is derived from the judicial interpretations of Article 21 of the Constitution of India.<sup>15</sup> Article 38(1) states that the state shall promote the welfare of the people by securing and protecting the social order, including justice, and Article 39-A states that the state shall, in particular, provide free legal aid, through appropriate legislation or schemes, to ensure that no citizen's opportunities for securing justice are denied.<sup>16</sup>

The bedrock of legal aid in our country is Article 39-A. It has been held in *Bangalore vs State of Mysore*<sup>17</sup>, para 13 that “While rights conferred under Part III are fundamental, the directives given under part IV are fundamental in the governance of the country. There is no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other”.<sup>18</sup>

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<sup>15</sup> Prativa Panda, Right to Legal Aid, Fundamental Right, Constitution, Legal Services Authority Act, 6 INDIAN JOURNAL OF APPLIED RESEARCH, (2016).

<sup>16</sup> Akarshita Singh, *Legal Aid in India: Current Scenario and Future Challenges*, MANUPATRA, (10<sup>th</sup> November, 2024), <https://articles.manupatra.com/article-details/Legal-Aid-in-India-current-scenario-and-future-challenges>.

<sup>17</sup> AIR 1970 SC 2042.

<sup>18</sup> Siddharth Rana, *Legal Aid in Indian Constitution*, 6 INTERNATIONAL JOURNAL OF CREATIVE RESEARCH AND THOUGHT, (2018).

Sheela Barse case (concerning the mentally ill in jails in West Bengal and Assam), the Agra Protective Home case and the Delhi Beggars' Home case,

In the case of *Sukh Das vs Union Territory of Arunachal Pradesh*<sup>19</sup>, it was stated that free legal aid at the cost of the state is fundamental right of a person accused of an offence which may result in jeopardy to his life or personal liberty and this is implicit of reasonable, fair and just procedure prescribed under Article 21.

In the case of *State of Haryana vs Darshana Devi*<sup>20</sup>, It was stated that the poor shall not be deprived of justice only for reason that they have to pay the court fee and refusal to apply the exemptive provisions of order XXXIII, CPC.

In the case of *State of Maharashtra vs Manubhai Pragji Vashi*<sup>21</sup>, it was stated that there has to be wider interpretation of the right to free legal aid and it is a guaranteed fundamental right under Article 21. Article 14 and Article 22(1) states that it is mandatory for the government to ensure equality before the law and legal system Article 42 read with Articles 21 and 39A states that it is the right of then imprisoned individual to seek legal counsel for doing justice to him.

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<sup>19</sup> (1986) 2 SCC 401.

<sup>20</sup> 1979 AIR 855, 1979 SCR (3) 184.

<sup>21</sup> 1997(1) BOMCR35, 1996CRILJ3910, 1996(2) MHLJ615.

## **XI. LEGISLATIVE FRAMEWORK OF LEGAL SERVICES IN INDIA**

Legal Services Authorities Act 1987: The Legal Service Authorities Act 1995 was established in 9<sup>th</sup> November 1995 in order to establish a uniform system of providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity. Under this Act, the National Legal Services Authority was setup to help in the implementation and proper surveillance of the legal aid programs carried out and to uphold the policies and the principles laid down by this Act in carrying out the legal aid programs.<sup>22</sup>

Bar Council of India Legal Rules 1983: The Bar Council of India Legal Rules 1983 very remarkable at this juncture as it defines who is a person entitled to legal aid<sup>23</sup>. It also states that there should be the constitution of Bar Council of India Legal Aid Committee<sup>24</sup> to formulate policies and ensure appropriate legal aid among the people.<sup>25</sup>

In the cases seeking Civil Remedy, Order XXXIII, R.18 of the Civil Procedure Code 1908 states that the state and the Central Government may make

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<sup>22</sup> MAMTA RAO, PUBLIC INTEREST LITIGATION – LEGAL AID AND LOK ADALATS, EASTERN BOOK COMPANY, (5<sup>th</sup> ed, 2018).

<sup>23</sup> Bar Council of India Legal Rules 1983, Section 2(j).

<sup>24</sup> Bar Council of India Legal Rules 1983, Rule 3.

<sup>25</sup> Bar Council of India Legal Rules 1983, Rule 4.

supplementary provisions for providing free legal services to an indigent person.

The Criminal Procedure Code ,1878 enacted and some light on the concept of legal aid was reflected when it stated that the accused should be defended by the pleader as a matter of right but should be engaged on his own cost and not free.<sup>26</sup> Even then, under the Criminal rules of practice of the High Court , there was the provision of the legal aid at he cost of the state to the poor and indigent , but only to those who were sentenced to capital punishment. It further stated that any person who is accessed of an offence or against whom criminal proceedings are instituted under this Code or has the right to be defended by the pleader of his own choice.<sup>27</sup> The Code also stated that it is the duty of the state to provide legal aid to the accused who do not have sufficient means to engage a pleader.

## **XII. LEGAL SERVICE DELIVERY SYSTEM IN INDIA: ISSUES AND CHALLENGES**

In spite of having a strong legal framework for the enforcement of legal aid services in the country and the law of the land recognizing the importance of providing the legal aid services to the needy as a matter of right, there are various setbacks which is

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<sup>26</sup> Criminal Procedure Code, Section 340.

<sup>27</sup> Criminal Procedure Code, Section 303.



hampering the adequate and proper implementation of the same. Issues also arise when the people are not aware of what constitutes justice delivery system through legal aid. Some of the issues and challenges are enumerated as below:

- a. Problem of legal representation: Legal representation is a process by which a lawyer represents a person in the court matters. Legal aid also includes taking the services of lawyer in initiating the process of justice delivery. Many a times it is seen people, especially in the rural areas are not aware about how to gather legal representation to seek legal aid. Sometimes people are hesitant because a lawyer is involved, sometimes reluctant because of the same. People are also not aware where to approach for initiating legal aid process.
- b. Problem of proper advice and awareness: Many a times it is seen that people generally are not able to get proper advice by their peers when it comes to the matter of seeking legal aid. It is also seen that people are generally discouraged to go for seeking justice through the legal aid clinic as they question upon the effectiveness of the same. People generally are not aware of the fact that law universities or law colleges actually run legal aid clinic and any assistance through those clinics can be equally effective.

- c. Problem of budgetary concerns: It is also generally seen that the problem regarding budget is of highest concern when it comes to providing legal aid in India. The National Legal Services Authority (NALSA) or the District Legal Service Authority function on the funds received from the grants given by the government. It has been stated that then states themselves have increased the budget allocation for legal aid but legal aid clinics have reduced by 44 per cent between 2019 to 2021 as stated by the India Justice Report (IJR) 2022.<sup>28</sup>
- d. Lack of dedicated legal aid Counsels: It is also been seen that there is lack of dedication of the legal aid counsels in India. This is because of the lack of a proper remuneration policy for the legal aid counsels. As per NALSA guidelines, a retainer lawyer providing legal services should get a remuneration of not less than 15000/- at the district level and of not less than 10000 at the Taluka level, but this is generally not the common scenario.<sup>29</sup> Due to lack of proper

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<sup>28</sup> Khadija Khan, *Justice System Plagued by Low Budgets*, India Justice Report 2022, INDIAN EXPRESS, New Delhi, (27<sup>th</sup> September, 2024), 10.10 AM),

<https://indianexpress.com/article/india/justice-system-plagued-by-low-budgets-india-justice-report-2022-8539575/>.

<sup>29</sup> Suryanshi Pandey, *Why Quality of Free Legal Aid Remains Poor in India*, SCROLL.IN, available at, (27<sup>th</sup> September, 2024), <https://scroll.in/article/1040169/why-quality-of-free-legal-aid-remains-poor-in->

remuneration counsels are not inclined towards legal aid services at a large scale.

- e. Problem related to para-legal volunteers: The basic function of then para-legal volunteers is to facilitate the organization of legal aid camps, promote legal aid schemes and help them reach the poor and the needy. Many a time it is seen that there is lack of proper training, monitoring and evaluation of the working of the para-legal volunteers.<sup>30</sup> This becomes a hurdle in the achieving the basic purpose of para legal volunteers.

The most important set back is that there lack of awareness among the people at the grass roots level. On a practical basis it can be asserted that the people of limited means who are in the dire need of proper legal services are not even aware that they can avail the services. This may be because of the socio-economic condition and lack of proper education. It is a fact that the services to reach the people of the grassroot level it has to be delegated by the centre and the state to the district level. However quite often it is found that there is not enough support from the district administration and hence, people are not able to access the same. Many a time the authorities

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india#:~:text=About%2020%25%20of%20legal%20aid,Law%20University%2C%20Delhi%2C%20who%20had.

<sup>30</sup> Beejal Ahuja, *Challenges and Solutions To Free Legal Aid*, IPLEADERS blog, (27<sup>th</sup> September, 2024, 11.05 AM), <https://blog.ipleaders.in/challenges-solutions-free-legal-aid/>.

complain that there is lack of funds, but proper investigation has to be done in that direction.

Another setback at the procedural level is that the legal aid counsels who are supposed to guide the people who are not aware of the procedures, are not taken very seriously. Many a time there is a question that since the legal aid is free, will it be effective. This has become a pre-conceived notion of the people. This can be improved if there is proper capacity building of the legal aid counsels and make their representation effective. It should be ascertained that there is effective representation not mere representation. The selection of the panel of lawyers for a particular case should be done properly. The 2010 NALSA Regulations at Regulation 15 also provides for the engagement of senior counsel in appropriate cases. However, this provision which can also serve as a tool for ensuring effective legal representation in crucial cases

There should be proper accountability mechanisms in the institutions who are looking into the legal aid services. The responsibilities should be made responsible for the actions. The District Legal Service Authorities (DLSA) should be made the bed rock of the entire legal services mechanisms. The interaction between the stake holders and the people working in the DLSA should be increased. Another issue is that most of the people who seek free legal aid are not well versed in the common language used by the service

providers. There difficulty faced by the people to understand the provisions. In the case of *Reena Hazarika v. State of Assam*<sup>31</sup>, there was a deliberation on the quality of legal services available to the appellant at the trial court and the High Court and it was stated that it is imperative that some reflection be done on this point.

### **XIII. ROAD MAP FOR IMPROVING LEGAL SERVICE DELIVERY SYSTEM**

Legal aid is an important component of any society. Even if there are various hurdles in reaching out to the people there should be always a way forward. It is the joint responsibility of various stakeholders in the society to uphold the idea of providing effective legal aid services to the poor and the needy. First of all, it is the responsibility of the educational institutions mainly the institutions of higher education to take the lead in this regard. It the primary responsibility of the law universities to set up legal aid clinics who can effectively help the local people in seeking free legal aid. Proper campaigns should be laid by them and specially in local languages.

Responsibility should also be among the Non-Governmental Organizations in inculcating a pro bono culture among the common people to make

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<sup>31</sup> 2018 SCC OnLine 2281.

them aware about their rights and the help they can seek from the state. The NGOs work with the people at the grass root level every now and then. So, it is expected that if they share the responsibility of making the people aware of the free legal aid services in *tandem* with the other legal service providers, the processes would be more effective.

Appropriate hand books should be made available by the government in the local vernacular language both for the parties seeking legal assistance as well as the legal service providers so that there can be stream lining of the duties of the lawyers in the discharge of their duties and there can be uniformity. This responsibility can be taken by the authorities both at the district level and the state level.

#### **XIV. CONCLUSION**

It is being rightly said that where their concept of governance and the governed, there will be rights and where there are rights there will be obligations. It applies both for the institutions of governance and the governed. Legal assistance is the responsibility of people for the benefit of the people. Even today many people are not aware of the means to access legal aid . it is the duty and the obligation of the state to provide legal assistance to the needy and provide awareness to the same. It is generally seen that people narrowly conceive the idea of providing legal aid services to the people with limited means. There is the need of wider interpretation of the term legal

services. There should be development of best practices and evolve more efficient mechanism to enhance the legal aid services. There is the need of appropriate changes to be made within the existing resources. The legal service providers should have the idea of reaching out to the people as much as possible and also respond to the same whenever asked for.

There has been a shift away from the beneficiary of legal services to the maintenance of institutions dispensing legal services, which should have been the other way. Though the institutional support and maintenance is also required, the service to the people should be kept at the forefront. It is hoped that in the near future the legal aid services will be more accessible and the common people will be benefited.

## Chapter - 10

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# LOK ADALATS: RECONCILING RIGHTS AND REALITIES BEYOND THE COURTROOM

Saksham Patiyar\*

### Abstract

*“The first duty of society is justice.”*

– Alexander Hamilton

The Indian Constitution’s Preamble envisions a framework for social, economic, and political justice, promoting fairness at all levels of society. In alignment with this vision, Lok Adalat has emerged as a crucial instrument in the dispensation of justice, aiming to resolve disputes through peaceful reconciliation of conflicting interests. It encompasses a harmonious integration of Rawlsian justice, Gandhian principles, and a utilitarian approach to the reconciliation of conflicting interests peacefully.

The establishment of Lok Adalat aligns seamlessly with Rawlsian principles of justice, emphasizing fairness as a cornerstone of societal order. Lok Adalat, rooted in Gandhian ideals, promotes non-

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adversarial methods for conflict resolution, encouraging the conciliation and mediation of disputes peacefully and harmoniously. This approach fosters an environment where reconciliation and harmony, not confrontation, are prioritized.

The origins, structure, powers, and jurisdiction of Lok Adalat have been meticulously designed to address the growing need for accessible justice. Lok Adalat, classified as National, Continuous, Daily, Mobile, Mega, and Permanent, each serves a specific purpose in the legal system, ensuring that justice is not just theoretical, but a tangible reality for all.

While Lok Adalat's have undoubtedly made strides in democratizing access to justice and fostering a culture of peaceful conflict resolution, challenges remain. The promotion and expansion of Lok Adalat, along with the necessary legal reforms, will only enhance their efficacy in providing fair, impartial, and timely justice to all sections of society, ensuring that the ideals of justice enshrined in the Constitution are truly realized.

## **I. INTRODUCTION**

The preamble of the Constitution of India ensures the achievement of social, economic, and political justice

for every individual in the nation.<sup>1</sup> Article 39A obligates the state to provide free legal aid for the poor and weaker sections of society and ensure access to justice for all.<sup>2</sup> Article 14 provides for equality before the law.<sup>3</sup> In contravention of these ideas, our judicial system has traditionally remained extremely technical and knotty in nature which has proven itself to be an obstacle in the way of justice and equitable opportunity. The long and never-ending legal battles are no less than a punishment for the aggrieved. The phrase “Justice deferred is justice undone” effectively captures the essence of the idea. The extraordinarily complex procedures even in trivial matters are itself aggravating. This may be regarded as a manifestation of a “Kafkaesque” world. The individuals are caught in an endless tape of nonsensical rules and administrative obstacles.

Observations of Justice VR Krishna Iyer, the crusader of social justice is substantive to this idea. In *State of Punjab & Anr v. Shamlal Murari & Anr*,<sup>4</sup> Justice Iyer underscored on the need to overlook the

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<sup>1</sup> PREAMBLE, THE SOUL OF THE CONSTITUTION, MINISTRY OF CULTURE  
[https://indiaculture.gov.in/sites/default/files/events/Preamble\\_the\\_Soul\\_of\\_the\\_Constitution\\_26.11.2020.pdf](https://indiaculture.gov.in/sites/default/files/events/Preamble_the_Soul_of_the_Constitution_26.11.2020.pdf) (last visited Jan 3, 2024).

<sup>2</sup> INDIA CONST. art. 39A.

<sup>3</sup> INDIA CONST. art. 14.

<sup>4</sup> *State of Punjab & Anr. v. Shamlal Murari & Anr.*, (1976) 1 S.C.C. 719.

complex procedures to give way to justice in the following golden words:

“We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho’ procedural, will thwart fair hearing or prejudice be doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, Courts are to do justice, not to wreck this end product on technicalities.”<sup>5</sup>

The conventional adversarial system has always remained prejudicial to the backward classes owing to its extravagant nature. For instance, it has become a general practice that attorneys pleading for victim compensation charge a significant share upon award of such an amount, defeating and diluting its very purpose and subsequently creating a barrier to access to justice.

Justice P.N Bhagwati in 1971 during a legal aid workshop in Gujarat said that "legal aid means

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<sup>5</sup> *Id.*

providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law, the poor and 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. Legal aid should be available to the poor and illiterate, who don't have access to courts. One need not be a litigant to seek aid by means of legal aid. As a result, the government should establish a system of funding to enable people who cannot afford the expense of litigation to get legal assistance.”

In a country like India, where the intensity of poverty is more than 40%,<sup>6</sup> the adversarial system is not at all sufficient but rather unconscionable because it serves the wider societal interests in no manner whatsoever which is indicative to dereliction of the fundamental constitutional morality i.e. justice and equitable opportunity. The adversarial system does not suit societies with extreme existing inequalities, like ours. These issues with the formal adversarial

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<sup>6</sup> NITI Aayog, *National Multidimensional Poverty Index: A Progress Review* 1 (2023), <https://www.niti.gov.in/sites/default/files/2023-08/India-National-Multidimensional-Poverty-Index-2023.pdf>. (last visited Jan 3, 2024).

system in India have made it inaccessible to seventy percent of the rural population.<sup>7</sup>

The idea of justice and equitable opportunity is deeply rooted in our Constitution. However, various factors inter-alia trivial technicalities, and fancy adversarial systems have historically been an obstacle to serving this justice and equitable opportunity. What may be stated herein is that our judicial system, especially in the pre-1990s era was not able to substantiate the idea of justice and equitable opportunity in its 'true' sense, especially for the backward and marginalized class. Thereby, a substantial gap and lacuna between the constitutional ideals and objective conditions is highlighted.

In furtherance of justice and equitable opportunity, the Legal Services Authorities Act<sup>8</sup> was passed in 1987 to ensure justice based on equitable opportunity. The underlying objective behind this act was that an individual's economic or social backwardness should not be an obstacle for him to secure justice.

Thereby the Lok Adalat's were established to advance the aforesaid objective and uphold the commitments

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<sup>7</sup> Sarfaraz Ahmed Khan, Lok Adalat: An Effective Alternative Dispute Resolution Mechanism 14, (2006).

<sup>8</sup> Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987 (India).

of the constitution. Lok Adalat is a form of substitute/alternative dispute resolution system. It is understood to mean “Peoples’ Court”. It is a forum where pending disputes are settled cordially.<sup>9</sup>

The foundation of Lok Adalat stems from John Rawls’s idea of justice. Rawls's first principle of justice argues that each person has an equal right to the farthest extended fundamental liberties compatible with equivalent rights for others. It incorporates fundamental political and civic rights which undisputedly include the right to speedy justice and prevention of harassment of vulnerable groups in the hands of the judicial system itself. This is exactly what Lok Adalat aims to do. The speedy disposal of cases and reduction of backlogs among others, was one of the foremost objectives behind their establishment. Yet another fundamental objective of the Lok Adalat may be categorized as securing justice for the backward class who may not have resources for a prolonged legal battle which completely aligns with the *Rawlsian* idea. Rawls believes that these rights are essential for individuals to pursue their own vision of moral life and to participate completely in the democratic process.

At the root of Rawls' philosophy is the concept of justice as equality. His second principle of justice

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<sup>9</sup> Lok Adalat, NATIONAL LEGAL SERVICES AUTHORITY (2019), <https://nalsa.gov.in/lok-adalat> (last visited Jan 3, 2024).

advocates for fair and equitable opportunity which an economically backward person, in no manner gets in the adversarial system. Therefore, Lok Adalat's advancement of this second principle serves as an alternative system where any and every person irrespective of the availability of economic resources can get justice.

Whereas the idea of Lok Adalat is generally associated with the Gandhian idea of "Gram Swaraj" which argued for a free and fair compromise procedure. Gandhi was of the opinion that the courts should be avoided if at all possible. When it comes to civil matters, Gandhi advocated for the establishment of an alternative conflict resolution mechanism that would be independent of the courts.<sup>10</sup> Both the Lok Adalat and the Panchayat system are founded on the same framework that Gandhi underlined as serviceable. In older times, conflicts were resolved via the use of Panchayats, which created the groundwork for the ideas that are the base of the alternative conflict resolution system that is in practice today. These principles inter-alia include mediation and negotiation.

The fundamental idea of Gandhi behind such reasoning was the "peaceful reconciliation of

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<sup>10</sup> Manoj Kumar, GANDHI'S CONCEPT OF CONFLICT RESOLUTION, SSRN (2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2927388](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2927388) (last visited Jan 3, 2024).

conflicting interests.” As a result of prolonged litigation neither party can be pleased by the defeat of the other. Rather than remaining in conflict and distress for several years reconciliation of conflicting interests should be done peacefully.

Lok Adalat can also be categorized as a product of an “utilitarian approach” combined with judicial realism. Strict adherence or what may be categorized as legal formalism, can be highly detrimental to the society as a whole diluting the very purpose of any legal system. Lok Adalat may be categorized as an ‘antithesis’ of legal formalism wherein trivial technicalities are not invoked rather the focus is on securing justice. By undertaking such practices Lok Adalat strives to maximize justice for the greatest number of people. Such practices not only secure speedy justice but also maintain public trust in the legal system.

## **II. OPERATIONAL DYNAMICS OF LOK ADALAT**

In the case of *Pt. Thomas v. Thomas Jobs*,<sup>11</sup> the Hon’ble Supreme Court discussed Lok Adalat: “The Lok Adalat is an old form of adjudicating system that prevailed in ancient India, and its validity has not been taken away even in modern times as well.”

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<sup>11</sup> *P.T. Thomas v. Thomas Job*, A.I.R. 2005 S.C. 3575 (India).



The ordinary courts in India are required to decide upon cases, which is an extremely time-consuming, costly, and laborious process. The reason being, the courts are already overwhelmed with a huge backlog of cases. The court might take years even to resolve trivial matters. Whereas, the Lok Adalat offers an alternate method of conflict resolution or an approach for achieving justice in a timely and cost-effective manner. During the procedures of the Lok Adalat, there are no winners and losers, and therefore, there is no animosity. The subject matter is resolved in a harmonious and serene manner.

The National Legal Services Authority, in conjunction with other local legal services bodies, has the authority to preside over Lok Adalat. The Una district of Junagarh, in the state of Gujarat, was the location of the very first Lok Adalat.

Within the framework of the Legal Services Authorities Act of 1987,<sup>12</sup> Lok Adalat is granted legislative status. The provision of the conduct of Lok Adalat is included in the provisions of Chapter VI of the said statute 5. The most notable feature of Lok Adalat is that it provides justice in a manner that is both casual and prompt. When compared to the conventional court system, it is very effective in reducing the backlogs in the ordinary courts, they place a greater emphasis on the speed with which

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<sup>12</sup> Supra at 9.

cases are resolved. In Lok Adalat, there is the opportunity for direct engagement with the judges, which is not feasible in regular courts without the assistance of a counsel. In this case, the parties involved find it convenient to access and less daunting to participate in a Lok Adalat because of the casual atmosphere in which it takes place. In addition, it makes cooperative approaches and friendly solutions easier to achieve.

The Lok Adalat encourages conciliation and settlements, and as a result, they seek to find a solution that is mutually agreeable rather than forcing a judgment on the parties involved. Through the provision of a platform for the expeditious settlement of disputes, Lok Adalat contributes to the advancement of social justice by making justice more conveniently available to the most vulnerable members of society.

### **III. FRAMEWORK AND EMPOWERMENT OF LOK ADALAT**

The Lok Adalat comprises serving or retired judicial officers, along with other individuals appointed by the competent authority as the case may be (national, state, or district level). This structure ensures that they have both legal expertise and additional perspectives as deemed fit by the competent authority.

A Lok Adalat has jurisdiction over any case pending before the court. Cases at the pre-litigation stage which means just before a formal lawsuit or litigation is initiated can also be brought before Lok Adalat'. Every award of the Lok Adalat shall be deemed to be the decree of a civil court. Every decision of a Lok Adalat is final and binding on both parties. The option of appeal against the award of the Lok Adalat is not present with either of the parties. Lok Adalat is a pocket-friendly way to resolve disputes. The petitioner is entitled to receive a refund of court fees paid if a matter is decided by a Lok Adalat. Lok Adalat has equivalent authority to that of civil courts when adjudicating a civil case, including the ability to call and compel the presence of witnesses, administer oaths for testimony, request the disclosure and submission of documents, and accept evidence in the form of affidavits or similar means. Lok Adalat has the necessary authority to establish its own dispute resolution processes.<sup>13</sup>

The Lok Adalat is empowered to adjudicate a diverse array of matters, encompassing both civil and criminal matters that are compoundable, as well as revenue disputes. It is competent to address motor accident compensation claims, partition claims, and cases involving damages. Furthermore, it may resolve matrimonial and family disputes. They also hold jurisdiction over cases involving a mutation of land

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<sup>13</sup> *Id.*

records, land pattas, and disputes arising from land acquisition. Additionally, other matters involve cases related to bonded labour, unpaid loans to banks, arrears of retirement benefits, and any matters that are not sub judice.<sup>14</sup> Lok Adalat also works within a specific fixed monetary jurisdiction. The Permanent Lok Adalat has jurisdiction up to Rs 1 crore.<sup>15</sup>

#### **IV. PURPOSE AND VISION OF LOK ADALAT**

*“It is the spirit and not the form of law that keeps justice alive”*

-LJ Earl Warren

Lok Adalat, focuses on the spirit of accessible and fair justice rather than strict adherence to formal procedures. The core idea behind Lok Adalat is that justice should be flexible, inclusive, and rooted in fairness rather than being bound by rigid formalities. It underscores the value Lok Adalat places on reaching just outcomes through conciliation and community involvement, rather than strictly following procedural norms. They are a more informal, community-oriented, and conciliatory process. Justice, at its heart, should be about

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<sup>14</sup> Manzoor Laskar, *Lok Adalat System in India*, SSRN (2014), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2420454](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2420454) (last visited Jan. 3, 2024).

<sup>15</sup> Lok Adalat, Delhi State Legal Services Authority, <https://dlsa.org/national-lok-adalat/#:~:text=The%20jurisdiction%20of%20the%20Permanent,One%20Crore> (last visited Jan. 3, 2024).

fairness and accessibility, which is exactly what Lok Adalat aims to achieve.

### **Administer Justice in a timely and speedy manner**

Lok Adalat is sometimes referred to as “Judicial People’s Festivals.” By virtue of their capacity to be assembled at suitable sites, to be conveniently organized, and provision of local languages, including those used by those who are illiterate, Lok Adalat makes it possible to expedite the administration of justice that too in an equitable manner. During the process of determining whether or not the claim is valid, the Lok Adalat does not strictly conform to the provisions governing the handling of procedures and the Evidence Act.

### **Legal Aid and Assistance**

Legal aid and assistance are often made accessible by Lok Adalat to individuals who in certain cases do not have the sufficient resources required to seek the services of a competent and meritorious practitioner/counsel. In this manner, it is made sure that it caters to even poor and vulnerable classes so that they can seek justice.

### **Raising Awareness**

One of the primary objectives of Lok Adalat is to raise the level of moral and legal consciousness among the

general people. Through various outreach projects and awareness campaigns, they want to attain their goal of enlightening citizens about the advantages of alternative dispute resolution, their rights, and the legal system.<sup>16</sup>

### **Offering an alternative**

The Lok Adalat provides a practical alternative to the traditional legal system by resolving conflicts in a manner that is informal, community-oriented, and voluntary within the community. It is a feasible alternative to regular court processes since it places a focus on accessibility above traditional court proceedings.

### **Public Participation**

Participation from the community in the administration of justice is encouraged with the utilization of Lok Adalat. It encourages a sense of ownership and trust in the judicial system by including the communities that are located in the area.<sup>17</sup>

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<sup>16</sup> Gov't of Mizoram, Aims & Objectives Mizoram State Legal Services Authority, Gov't of Mizoram, India, <https://mizoslsa.mizoram.gov.in/page/aims-objectives> (last visited Jan. 3, 2024).

<sup>17</sup> Aims & Objectives of Legal Services Authority, Karnataka State Legal Services Authority, <https://kslsa.kar.nic.in/aboutus.html> (last visited Jan. 3, 2024).

## V. DIFFERENT FORMS OF LOK ADALAT

Lok Adalat in India have extensively evolved into multiple forms, each tailored to address specific needs within the legal system.<sup>18</sup> Among these, National Lok Adalat plays a crucial and prominent role. Held monthly, focused on a specified subject matter, pre-determined, such as traffic violations, family disputes, or financial matters. By focusing on certain issues during each session, they can handle large volumes of cases across the nation efficiently and effectively. It has proven to be effective in reducing the workload of ordinary courts.

Another form of Lok Adalat is the Continuous Lok Adalat, which operates over a set period to handle unresolved cases. This model allows to adjourn cases as needed, encouraging the parties involved to for a potential settlement and, if possible, return to negotiate at the next session. By creating a continuous framework, they can help to resolve issues that may not be immediately settled but still hold potential for amicable resolution.

**Daily Lok Adalat** represents yet another form, distinguished by their frequency—they are convened every day. By holding sessions daily, these Lok Adalat cater to a high volume of cases and are particularly

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<sup>18</sup> Dep't of Justice, <https://sansad.in/getFile/loksabhaquestions/annex/1710/AU1677.pdf?source=pqals> (last visited Jan. 3, 2024).

useful in areas with heavy caseloads, providing quick and accessible resolutions regularly. Their daily operation allows for the efficient processing of minor cases, ensuring that small disputes do not congest the formal court system.

The **Mobile Lok Adalat** is yet another innovative form for extending justice to remote and underserved areas. These Lok Adalat are held occasionally, and they travel from one location to another, addressing cases in areas where people may have limited or no access to courts. Mobile Lok Adalat is especially beneficial in rural and semi-urban areas, as it brings the judicial process closer to the community, reducing the need for people to travel long distances to resolve disputes.

The **Mega Lok Adalat** is organized on a wide scale, encompassing all courts at the state level on a single designated day. By mobilizing resources across various courts, the Adalats can handle a massive number of cases in a short period. This approach is extremely effective for reducing case backlogs and addressing issues that have been extraordinarily delayed. Mega Lok Adalat often receives substantial media attention, which helps to raise awareness of the Lok Adalat system.

Last but not least, **Permanent Lok Adalat** serves as a specialized forum, focusing on disputes related to public utility services such as transportation, postal services, and telecommunications. Established to



resolve issues in sectors affecting the public at large, these Lok Adalat's operate continuously and provide a platform where people can resolve their grievances related to essential services efficiently.

In essence, these varied forms of Lok Adalat enable the Indian judicial system to address a diverse range of cases in an efficient, accessible, and community-centric manner. Through National, Continuous, Daily, Mobile, Mega, and Permanent Lok Adalat, India's legal framework has created a multifaceted approach to alternative dispute resolution that prioritizes accessibility, expediency, and adaptability. Each type of Lok Adalat plays a vital role in promoting social harmony and trust in the legal process, helping to achieve the fundamental objective of making justice accessible, efficient, and community-oriented.

## **VI. THE PROCEDURAL ARCHITECTURE OF LOK ADALAT**

There are two procedures under which cases may be taken up by Lok Adalat for resolution. The process may be initiated either on application by any of the parties involved or it may be suo moto, contingent on the circumstances of the case. Such a framework ensures that each individual is given an equal opportunity to present their case, while the Lok Adalat, is guided by principles of natural justice.

**On Application:** Any time that all of the parties involved in the case come to an agreement that the

matter should be sent to Lok Adalat, or in the event that one of the parties involved in a legal dispute submits a petition to the court requesting that the matter may be referred to a Lok Adalat, and the court begins by determining if there are substantive reasons of a possible settlement.

**Suo Moto:** In cases where the court determines that the subject is suitable for the Lok Adalat to consider, it shall refer the case to the Lok Adalat subsequent to affording all parties a reasonable opportunity to present their case. In addition, the organizing authority or committee of Lok Adalat may, at the request of any party to a dispute, refer that dispute to

Lok Adalat provided that all parties are afforded a reasonable opportunity to present their case. Lok Adalat shall expeditiously proceed with the disposition of a case that is referred to it. The Permanent Lok Adalat shall be guided by the principles of law, justice, equity, and fairness. It will strive to achieve a resolution or compromise among the involved stakeholders. In the absence of a successful compromise or resolution, the case shall be remanded to the court from which it was referred. The court will then resume proceedings from the point in time immediately preceding the reference.

## **VII. DUAL FACETS OF LOK ADALAT**

*“There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”*

- Justice Hugo Black

Lok Adalat offers an efficient and cost-effective alternative to ordinary court proceedings, particularly in resolving property disagreements and marital issues. By providing a platform for amicable resolution independent of formalism, it helps parties save time, money, and avoid the complexities of prolonged litigation, making it a widely popular choice for those seeking an expedited settlement.

When compared to ordinary courts, Lok Adalats are considered to be much more effective and expedient in the resolution of family problems such as disagreements over property and issues pertaining to marriage. People often choose to resolve problems outside of court fairly and equitably, which is a service that Lok Adalat efficiently provides. Although family courts are available to address such situations, people frequently prefer to do so. Arbitration provides the parties with the opportunity to save both time and money, in addition to simplifying the procedure by which they may establish their rights about the dispute. This is in contrast to the processes that take place in court when witnesses could be unwilling to participate

owing to worries about being involved in legal matters.

Both the victim and the offender have the choice of either retaining the services of an attorney to present their cases or communicating directly with the court without the use of legal counsel. Both of these options are available to them.

Even in the event that a dispute is taken before a court, the party would be paid for any costs that were expended after the issue has been resolved by Lok Adalat. On account of the fact that there are no costs associated with this technique of litigation, serves as an extra motivation for spreading knowledge about it.

If citizens are inspired to make use of this option and awareness is raised, Lok Adalat has the potential to serve as a beneficial supplement to the functioning of courts and have a good influence on the administration of justice. However, this is contingent upon the fact that individuals are aware of the situation. Individuals who are economically disadvantaged and those who are illiterate may be eligible for extra benefits if they make use of Lok Adalat. The proceedings are sped up and simplified, and they may even be conducted in the individuals' native languages.

The number of cases that need jurisdiction is increasing at a rate that is cause for worry, and it is

obvious that our country is experiencing a serious scarcity of courts and judges, which is causing unjustified delays, even in problems that are relatively small but require resolution. In the event that a higher number of people were to appreciate the significance of Lok Adalat and make use of it as a way of effectively resolving legal problems, there would be a decrease in the number of cases that have been lingering in court files for years without being resolved.<sup>19</sup>

While Lok Adalat may offer numerous benefits there are also certain limitations and potential drawbacks associated with its expedited procedures. These limitations, inter-alia the risk of inadequate compensation and the inability to address all types of legal issues, must be carefully considered to ensure that justice should not be compromised in the pursuit of swift resolutions.

One of the potential drawbacks of accelerating the legal procedure is that it may end in a settlement that is less costly than the original amount of compensation. The petitioner did not have sufficient time to submit their claim for the larger sum that they were entitled to in many instances. As a consequence of this, the Supreme Court in the land has given Lok

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<sup>19</sup> SCLSA Lok-Adalat, SCLSC, <https://sclsc.gov.in/Lokadalat#:~:text=It%20provides%20fair%20and%20uncomplicated,and%20free%20of%20cost%20amicably> (last visited Jan. 3, 2024).

Adalat the instruction to exercise caution in order to safeguard the interests of all of the parties concerned in the matter. The adoption of Lok Adalat should not result in the compromise of justice, which is a disadvantage connected with this system. This must be avoided at all costs.

The Lok Adalat does not have the authority to decide on every single subject or issue. It is possible that Lok Adalat is not appropriate for every situation since its primary emphasis is on coming to a conclusion and engaging in conciliation. In the majority of cases in India, the Lok Adalat cannot apply punishment or correctional measures. This implies that the Lok Adalat does not have jurisdiction over these matters. Generally speaking, these cases would be unsuccessful in this jurisdiction, and they would then be submitted to the courts for decision.

## **VIII. IMPERATIVES OF LOK ADALAT**

*“True Justice is not a matter of revenge but reconciliation”*

The court system has witnessed a noteworthy backlog of cases, resulting in substantial delays in the settlement of matters. At present, the judiciary is facing a significant backlog of unresolved cases, which is worsened by the limited availability of court resources and judges. The discrepancy between the resources required to administer justice and the degree of public demand for it has resulted in a need

for alternative institutions that provide public access to justice.

The incorporation of Lok Adalat is crucial in addressing this problem due to its practical, cost-effective, and viable approach to attaining justice. The Lok Adalat provides fair and unhindered availability of justice to the general public, by removing financial obstacles and accelerating the process. Individuals may opt for Lok Adalat as an alternate method of settling conflicts. By using this alternative method of resolving disputes, not only is the financial burden of legal proceedings reduced, but it also saves time for the parties involved and their respective witnesses.

The technique is deliberately designed to be efficient, expeditious, and satisfying for all participants. As Justice Veeraswami Ramaswamy said:

*“Resolving disputes through Lok Adalat not only minimizes litigation expenditure, it saves valuable time of the parties and their witnesses and also facilitates inexpensive and prompt remedy appropriately to the satisfaction of both the parties”*

## **IX. DYNAMICS OF LOK ADALAT**

The approach that Lok Adalat takes is both flexible and varied. It is possible to create a favourable atmosphere for the establishment of harmonious

agreements by creating an environment that is receptive to communication and fosters frank and open conversation among the parties concerned.

In contrast to conventional courts, Lok Adalats are conducted in a setting that does not include adversarial proceedings. The protracted and occasionally contentious nature of traditional court processes may be mitigated by the cultivation of common understanding and the emphasis placed on collaborative efforts.

With regard to the process of dispute resolution, Lok Adalats has shown an exceptional level of effectiveness. When high importance is placed on achieving a consensus that is acceptable to all parties and encouraging reconciliation, it is frequently possible to discover resolutions that adequately cater to the concerns of both groups, hence reducing the need for drawn-out legal processes. This is because it is possible to create resolutions that are acceptable to all parties.

In Lok Adalat, participation is entirely voluntary; nevertheless, parties are obligated to comply with the ruling if they choose to take part in the proceedings. Because participation in this method is entirely voluntary, it ensures that the only individuals who are eligible to take part are those who have a genuine desire to reach a settlement as quickly as possible.



## **X. REVOLUTIONIZING JUSTICE ACCESSIBILITY**

*“Law must be stable, yet it cannot stand still”*

-Roscoe Pound

Recently, Lok Adalat has shown its effectiveness in resolving legal issues in India. Their commendable and cost-effective strategy has received praise not only from those involved in legal matters but also from the general public and legal authorities. The Lok Adalat has great significance in India, especially for citizens struggling with the complexities of the legal system or lack of resources. Such a forum was extremely important in upholding the fundamental constitutional morality of each individual to have equitable access to justice irrespective of his social or economic status. It encompasses a harmonious integration of Rawlsian justice, Gandhian principles, and a utilitarian approach to the reconciliation of conflicting interests peacefully. It is noteworthy that in addition to said Lok Adalat also closely aligns with Roscoe Pounds’ sociological jurisprudence. According to Pound, a law should strive to advance social justice in accordance with the changing needs of society rather than being rigid. In furtherance of the Pounds’ ideas, it strives to extensively serve the wider interests of the society. It is also reflective of judicial dynamism to curb the changing needs of the society which is exactly what is being stated by Pound.

However, merely possessing an exemplary model is insufficient; its effective implementation is equally paramount to ensure its success and efficacy. The Lok Adalat system is widespread and has the potential to deal with many more cases. Notably, access to justice is impossible for most Indians without legal aid.<sup>20</sup> Therefore, any and every possible misuse of this golden model should be prevented so that the authentically deprived can receive the benefits. For the said purpose dishonest litigants having ulterior motives must be kept outside of the picture. Priority must be given to the truly disadvantaged. For instance, matters pertaining to individuals with a family income lower than three lacs per annum should be disposed of on a priority basis. Trivial matters involving economically disadvantaged individuals like petty thefts should be mandatorily dealt with by Lok Adalat rather than ordinary court. Matters like traffic challans which may involve some unscrupulous individuals and have a scope of misuse should be removed from the jurisdiction of the Lok Adalat. Some oversight measures must be employed to ensure transparency and accountability in the process. Some revolutionary measures on such lines are the need of the hour in order to prevent the defeat of the fundamental purpose with which Lok Adalats were established. Efforts should be made to preserve

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<sup>20</sup> Whitson, *supra* note 2, at 393.

the exemplary jurisprudential triumph of a legend, a phenomenon, a one-man army against injustices, and an upholder of all just causes and above all a great humanist, Justice V.R Krishna Iyer.

The Lok Adalat system is widespread and has the potential to settle many more millions of disputes. The justification why this system has a lot of scope for success, especially in India is that there is a stigma attached to courts. There is a perception of social disgrace and being involved in a court case is socially undesirable and disgraceful. Court involvement often carries a presumption of wrongdoing or suspicion. Therefore, people prefer alternative mechanisms like Lok Adalat to avoid formal legal proceedings and their associated stigma. This stigma can motivate people to seek Lok Adalat thereby there is a lot of underlying scope and potential to deal with much more matters.

In order to truly maximize the significant influence of Lok Adalat, it is essential to promote them to wider distribution. The incorporation of Lok Adalat for the impoverished populace represents a praiseworthy and morally upright structure. This method not only accelerates the settlement of disputes within the existing legal system but also provides support to people, particularly those who are financially poor and have obstacles in accessing conventional legal avenues to protect their rights.

Lok Adalat can be said to lay the foundation stone of alternative dispute resolution principles in the Indian context, especially in rural India. Lok Adalat can be credited as the “bedrock” of the Alternative Dispute Resolution practices in India. The introduction of concepts *inter alia* mediation, negotiation, and reconciliation can be accredited to the concept of Lok Adalat which are becoming prevalent and widely recognized in contemporary times. For instance, ADR clauses are now considered to be ubiquitous in modern agreements. Mediation, especially in family matters, has become a key approach in resolving nearly all matrimonial disputes. When India has made significant strides in advancing alternative dispute resolution, what may also be taken into consideration is the modernization and integration of progressive practices into Lok Adalat’s to make it more efficient and effective.

## Chapter - 11

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# ACCESS TO FREE LEGAL AID AS A CONSTITUTIONAL MANDATE: AN ANALYSIS

Yapi Kiri\*

Dr. Kuldeep Singh Panwar\*\*

### **Abstract**

Free legal aid refers to providing pro bono legal representation to the underprivileged and destitute who are unable to pay for a lawyer who will represent them in court, before a tribunal, or before an authority.<sup>1</sup> The right of citizens to access justice is guaranteed by Article 14, Article 21 and Article 39A of the Indian Constitution. However, international as well as domestic law continue to have issues with access to justice as a human right<sup>2</sup>.

The importance of equality to justice is reinforced by both the guiding principles provided in part IV and part III of the Indian Constitution. They serve as the

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<sup>1</sup> RAI KAILASH, PUBLIC INTEREST LAWYERING LEGAL AID AND PARA- LEGAL SERVICES, (Central Law Publications 2005).

foundation for the administration of the welfare state but are not as legally binding as fundamental rights. Though not being enforceable, Article 38, Article 39-A, Article 41, and Article 46 have provided appropriate guidance for the advancement of equal access to justice in India.

Under the Legal Services Authorities Act of 1987, the NALSA was established to offer free legal assistance to the underprivileged segments of society. The author seeks to present an analysis of the statutory provisions on free legal aid from Constitutional perspective.

**Keywords:** law, legal Aid, constitutional provision, poverty.

## **I. INTRODUCTION**

The welfare state and legal aid are closely related, and opinions regarding welfare have an impact on whether a state chooses to offer legal help. Legal aid is a social service provided by the government to those who would not otherwise be able to pay for legal representation. Legal aid helps ensure that people have means to approach the courts and legal representation, which helps to enforce welfare laws.

Giving free legal services to the underprivileged and destitute who cannot afford to hire an attorney to represent them in court, before a tribunal, or before an authority is known as legal assistance. Legal aid

has been given special status under the Constitution. This specific provision in the constitution is where the idea of legal aid originated. Until we develop a system of justice administration where economic disparity is not a factor in receiving justice, the execution of the National Charter will remain unachievable as long as socio economic and other types of injustice persist.<sup>3</sup>

Indian Constitution under part IV added Article 39A as a directive to fulfil the promise made in the Preamble to secure all citizen's justice, which shall be social, economic, and political. India is still counted as a developing country, although it is progressing and the economy is undergrowing, as poverty is still a challenge. However, a challenge like this shouldn't deprive people of their rights. Our country believes in constitutional supremacy to fulfil this promise. The Constitution's Articles 14 and 22(1) also require the State to guarantee every citizen equality before the law.<sup>4</sup>

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<sup>3</sup> SARFARAJ AHMED KHAN, LOK ADALAT AN EFFECTIVE ALTERNATIVE DISPUTE RESOLUTION MECHANISM 14 (APH New Delhi 2006).

<sup>4</sup> Nirbhay Saxena, *Law and Poverty - Legal Aid and Statutory*, (1.4) JCLJ.219,220-222(2021).

## II. HISTORICAL BACKGROUND

The concept of equality which is given under Art.14 of the Constitution clearly states that every citizen has equal protection under the law, regardless of religion, caste, sex, or place of birth. Moreover, no one who has been detained may be refused the opportunity to speak with and be represented by a lawyer of their choice under Article 22(1). Despite the fact that everyone has the fundamental right to access justice, the impoverished nonetheless suffer because they are unable to pay the exorbitant expense of the legal system and must frequently put up with injustice.<sup>5</sup>

The Indian government in 1952, initiated a series of conferences with law ministers and Law Commissions to discuss the matter of legal aid for the poor. In 1960, the government established a few rules pertaining to legal assistance initiatives. Kerala was the first state to introduce Kerala Legal assistance, a legal assistance program for the underprivileged. Similar initiatives to give the impoverished and destitute free legal assistance have also been put into place in Tamil Nadu and Maharashtra.

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<sup>5</sup> Ajay Singh Rathore, *Article 39A: Is Probono Legal Aid Comeatable?* (2.4) JCLJ. 1480,1481-1482 (2022).



By inserting Article 39A,<sup>6</sup> which stated that the authority must guarantee equal access to justice for all and provide free legal aid to those in need so that no economic or other disability prevents anyone from seeking justice, the 42nd Constitution Amendment<sup>7</sup> made free legal aid a statutory requirement in 1976. Such a concept gained official legal sanction in 1995 with the passage of the Legal Services Authorities Act in 1987 and the formation of NALSA.<sup>8</sup> It was meant to act as a ray of hope for the impoverished ever since.

### **III. LEGAL FACILITIES AND FREE LEGAL AID**

The Legal Services Authorities Act<sup>9</sup> (Article 39-A of the Indian Constitution) was passed by the Central Government of India based on the committees' recommendations. The Act of 1987, which brought about various modifications to the Act, became operative in November of 1995. It offers those who are disabled, economically poor, or backward legal aid. The requirements for eligibility for free legal services are outlined in Section 12.<sup>10</sup>

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<sup>6</sup> INDIA CONST. art. 39A amended by The Constitution (Forty-second Amendment) Act, 1976.

<sup>7</sup> *Id.*

<sup>8</sup> National Legal Services Authority Act, 1995 & No.39, Act of Parliament, 1995 (India).

<sup>9</sup> *Id.*

<sup>10</sup> LEGAL SERVICES AUTHORITY ACT, 1987, s. 12.

Justice and equality for all citizens are mandated under the Indian Constitution. While Article 22(1)<sup>11</sup> requires equal representation for all people to preserve their rights, Article 21 guarantees the right to life and liberty. Consequently, all citizens are entitled to legal counsel, and the state bears the obligation of furnishing it.<sup>12</sup> The legal code explicitly specifies who qualifies for legal aid. Pro Bono services cover every step of the legal procedure, from the beginning to the final ruling on support and funding.

#### **IV. LEGAL AID AS CONSTITUTIONAL MANDATE**

The concept of equal justice for all and access to free legal rights is provided under the Indian constitution. In particular, the directives power is given to the state to provide legal aid by providing an appropriate legislation or to ensure that appropriate schemes are made for the citizens to secure justice and follow the constitutional mandate for those citizens who cannot get legal assistance due to economic or any other hindrance. Under Article 39A directives have been issued to the state government to ensure that equal opportunity to promote the legal system must be achieved by citizens equally irrespective of the difference they are having.

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<sup>11</sup> INDIA CONST. art. 21.

<sup>12</sup> Khatri & Ors v. State of Bihar, 1982 SCR (2) 408.

The state is required by Article 39A to ensure that justice is upheld on the basis of equal opportunity in the legal system. The two instances of the word "shall" in Article 39A make it evident that the text is written in terms of requirements. The Legal Services Authority Act, 1987, which was passed by Parliament, established the lok adalat system, which has been praised by the Supreme Court. It attempts to reduce the volume of cases that the civil courts deal by providing a mechanism for alternative conflict resolution. The Court has mandated that additional authorities establish these Adalats.<sup>13</sup> The Act was amended in 2002 to call for the establishment of Permanent Lok Adalats for public utility services by the Central Authority or, if necessary, each State Authority.

In *Gopalanchari v. State of Kerala*,<sup>14</sup> a three-judge panel of the nation's highest court upheld legal aid as a fundamental human right and named it as such. As such, the courts were tasked with protecting and advancing this right. The Supreme Court "has highlighted that it is a fundamental obligation, required not only by Article 39A but also by Articles 14 and 21,<sup>15</sup> to provide legal help to a poor or indigent accused who is arrested and his life or personal liberty is at risk. Injustice may ensue if legal aid is

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<sup>13</sup>Abdul Hassan v. Delhi Vidyut Board, AIR 1999 Del 88.

<sup>14</sup>AIR 1981 SC 674, 1981 SCR (1) 1271.

<sup>15</sup> INDIA CONST. art. 39A, 14 & 21.

not provided. Every act of injustice weakens democracy's underpinnings.”

Free legal aid at public expense has been elevated to the status of a fundamental right for anyone accused of a crime that could put their life or personal freedom in danger after Article 39A was interpreted in light of Article 21. Additionally, the Court decided that allowing a poor, ignorant, and illiterate accused human being to request free legal help would be absurd and would make a mockery of the system. As a result, if the accused is unable to hire an attorney due to his inability to pay, the presiding judge has a duty to advise him that he can receive free representation at the expense of the state.<sup>16</sup> According to Article 39A, the societal goals of free legal help and equitable justice must be carried out by the establishment of institutions for free legal aid or through appropriate legislation.<sup>17</sup>

In reality, the provision of free legal assistance at all levels is fully provided by the Legal Services Authority Act, 1987. While under Article 39A addresses the legislature and the executive branch, the courts are also subject to this obligation because they have the authority to engage in "judicial law-making within the interstices of the Constitution or any statute before

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<sup>16</sup> Suk Das v. Union Territory of Arunachal Pradesh, AIR 1986 SC 991.

<sup>17</sup> Ranjan Dwivedi v. Union of India, AIR 1983 SC 224: (1983) 3 SCC 307.

them for construction." Free legal aid refers to more than just defending an impoverished or destitute accused person who is detained and faces threats to his life or personal freedom.

The Supreme Court "has further declared, in relation to Article 39A, that as high court costs impede effective access to justice, they ought to be correlated with spending on the administration of justice. One day, the Supreme Court may have to decide whether or not such exorbitant court costs are reasonable or permitted."<sup>18</sup>

## **V. LEGAL AID UNDER DIRECTIVE PRINCIPLE OF STATE POLICY**

The state has a duty to advance the welfare of its citizens by establishing and upholding a social order that ensures social, economic, and political justice.<sup>19</sup> As stated in Article 38, the state is required to work toward reducing disparities in income as well as eliminating status, opportunity, and facility inequalities—not just between individuals but also between groups of people who live in various parts of the state or undertake different careers.

Article 41 must be read along with Article 38.<sup>20</sup> The Preamble of the Constitution states, among other

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<sup>18</sup> *Central Coalfields v. Jaiswal Coal Co.*, AIR 1980 SC 2125.

<sup>19</sup> INDIA CONST. art. 38.

<sup>20</sup> INDIA CONST. art. 41 & 38.

things, that the Republic state's purpose is to ensure social, economic, and political fairness.<sup>21</sup> This instruction restates that statement. Equal opportunity is the foundation upon which Article 39-A advances justice. It places a mandatory obligation on the state to give the underprivileged free legal assistance.

## **VI. STATUTORY PROVISION RELATING TO LEGAL AID**

### **Article 39A: Indian Constitution**

The state must ensure that the legal system operates in a way that promotes justice on the basis of equal opportunity. In particular, it must provide free legal aid through appropriate legislation or schemes or in any other way to guarantee that opportunities for securing justice are not denied to any citizen due to financial or other disabilities. The enforcement of welfare provisions is another way that legal aid and access to the courts contribute to equal justice and free legal aid.

The goal of Article 39A is to advance “Justice based on equal opportunity.” It requires the state to offer low-income people with free legal assistance. The 42nd Amendment Act of 1976 introduced this specific Article. It is intended that low-income

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<sup>21</sup> India Statutory Corporation v. United Labour Union and Others, AIR 1997 SC 645; (1997) 9 SCC 377.

litigants will be able to access the judicial system, exercise their legal rights, and get equal protection under the law. It is currently affirmed that legal aid was enforced by the Court and was a component of the right to personal liberty protected by Article 21. If a poor man needs legal representation, the State is required to provide one and to pay the attorney the fees set by the Court.

By a resolution dated September 26, 1980, the government formed the "Committee for Implementing Legal Aid Schemes" (CILAS) with the goal of providing free legal aid. Mr. Justice P.N. Bhagwati, who served as the committee's chairman before becoming India's Chief Justice, led the group in overseeing and implementing legal aid programs consistently across all states and union territories. A model legal aid program that can be implemented nationwide was developed by CILAS, and as a result, various legal aid and advisory boards have been established in the states and union territories.

As a result, the Constitutional Directive under Article 39-A given under part IV was implemented with the passage of the Legal Services Authorities Act, 1987. Legal services authorities have been established at the federal, state, and local levels in accordance with this Act. Together, these authorities and the Legal Services Committees of the Supreme Court, High Court, and District Courts support the goal of the Act, which is to guarantee that no citizen's ability to

obtain justice is restricted because of their financial situation or other disabilities by offering free and competent legal services to the most vulnerable members of society.

## **VII. CONSEQUENCES OF FAILURE TO PROVIDE LEGAL ASSISTANCE**

The Supreme Court distinguished between pre- and post-trial legal aid in Ajmal Kasab case. Regarding the former, the Court ruled that the trial would not be deemed vitiated unless it could be shown that the accused had suffered substantial prejudice. Regarding the latter, “the court reaffirmed in *Suk Das v. State of Arunachal Pradesh* that it is the constitutional duty of the court to provide the accused with legal representation prior to the start of the trial, regardless of whether the accused does not want legal representation or stays silent. In the event that the accused decides on his own to represent himself in court and does not want legal representation, the court has an absolute obligation to provide him with legal representation from the beginning of the trial. If this is not done, the trial, the conviction, and any sentence imposed on the accused will all be deemed void.”<sup>22</sup>

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<sup>22</sup> SCC ONLINE WEB EDITION, <https://scconline.com> (last visited Oct.29, 2023).



In *Sukh Das v. Union Territory of Arunachal Pradesh*,<sup>23</sup> “the Supreme Court considered whether the accused's application for free legal aid was a requirement for exercising their right to access justice. It was argued that in the event that he does not apply for free legal aid, the trial may legitimately continue without him receiving sufficient legal representation.”

It is often known that more than 70% of people who reside in rural areas are illiterate, and that an even higher number of people are not aware of their legal rights. Not even literate people know what their legal rights and entitlements are. This ignorance of the law results in deception, exploitation, and denial of rights and benefits for the poorest citizens of this nation. Their legal needs are always likely to be crisis-oriented because of their poverty, which makes future legal concerns more severe, and their illiteracy, which prevents them from foreseeing legal issues and getting legal advice in a timely manner. They are also unable to become self-sufficient since they lack literacy and knowledge and are incapable of helping themselves. The law is no longer their shield since they don't know they may use the legal assistance program to reclaim their rights, or that they even have a right to legal protection. They consequently live in extreme poverty and utter helplessness.

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<sup>23</sup> AIR 1986 SC 991.

The awful circumstances that the destitute find themselves in may be somewhat alleviated by raising legal awareness among them. For this reason, the goal of the national legal aid movement has always included improving legal literacy.

### **VIII. CONCLUSION**

The idea of free legal help will release people from the chains of ignorance and exploitation. Distributive justice, efficient welfare benefit implementation, and the abolition of structural and social discrimination against the poor are the main goals of legal aid. Legal aid clinics can be included into the police and magistrate's chain of command, requiring the state to provide legal representation to those in need. It operates in compliance with the Legal Services Authorities Act of 1987, which serves as a manual for the administration of free justice.

The goal of legal aid is to fairly distribute the welfare benefits in an efficient manner. As stated above, the Legal Services Authority Act of 1987 contains a rule pertaining to the provision of free equity. It is a privilege granted to the people by the government. Because exploitation and scarcity are the root causes of a lack of legal understanding of the rights and advantages that the state should provide to the impoverished.

## Chapter - 12

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# BEYOND LEGALITY: NAVIGATING LEGAL SERVICES AND TRANSGENDERS RIGHTS IN TAMILNADU

Dr. E Prema\*

Abarna D S\*\*

### Abstract

Transgender refers to an umbrella term for persons whose sex assigned at birth is distinct from that of their gender identity. The legal aid services were brought into effect by the Legal Services Act, of 1987. In the neoteric scenario, legal advancements have sought to concede and protect the rights of the transgenders. However, it is evident that a significant gap still exists in understanding the practicalities of their interactions in legal aid services. This study aims to bridge this gap by unravelling the convoluted challenges in the quest for legal aid services by transgenders. This study involves an in-depth analysis through interviews with 12 transgenders having diverse backgrounds from Tami Nadu. The primary objective of the research is to illuminate the

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experiences of transgender individuals within the legal system, examining the barriers that impede their access to legal assistance. The interviews are structured to capture the multifaceted nature of their experiences, personal encounters with legal aid services, and systemic barriers hindering access to legal aid services. This research not only identifies the challenges but also amplifies the voices of transgenders in proposing tangible recommendations for improvement. The participants involved in the research advocate for community-driven awareness programs, cultural competency training for legal professionals, and the establishment of transgender-friendly legal support networks. These recommendations foster a legal aid framework that is not only accessible but also responsible for the unique needs of the transgender community. The paper critically analyses the implications of these findings within the broader context of transgender rights. It contributes a rich narrative to the discourse on transgender rights by unravelling the intricacies of their experiences with legal aid services. By highlighting challenges and proposing actionable recommendations, the study strives to inform policies and practices that can significantly enhance the accessibility and effectiveness of legal aid for transgenders.

**Keywords:** Legal aid, Transgenders, Gender Identity, Policy Reforms.

## I. INTRODUCTION

The legal frameworks, recently, have undergone substantial evolution in order to recognize and safeguard the rights of transgenders, challenging the historical norms of discrimination and marginalization. India, standing at the forefront of these transformations has made significant strides in acknowledging and safeguarding the inherent rights of the transgender community.

The route map from the legal recognition to the effective implementation of these rights is a complex narrative, where the role of legal aid services emerges as a critical and often unexplored chapter.<sup>1</sup> Despite legal reforms, the lived experiences of transgender individuals reveal a stark reality. Many encounter challenges when attempting to access legal aid services. Instances of discrimination, dismissive attitudes, and a lack of cultural sensitivity from legal professionals are not uncommon. Systemic barriers further compound these challenges, ranging from the absence of transgender-inclusive policies to limited cultural competence among legal service providers. Consequently, the transformative potential of legal rights for transgender individuals is contingent upon

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<sup>1</sup> *Understanding the transgender community (2023) Human Rights Campaign.* Available at: <https://www.hrc.org/resources/understanding-the-transgender-community> (last visited on 20 September 2023).

the accessibility, inclusivity, and responsiveness of legal aid services.

The significance of legal aid for the transgender community extends beyond mere access to justice, thus serves as a catalyst for empowerment, societal integration, and the assurance of basic human rights.<sup>2</sup> However, the gap between legal recognition and practical implementation persists, requiring a focused examination of the experiences, challenges, and opportunities within the context of legal aid services for transgender individuals in India. Understanding these challenges necessitates a profound exploration into the narratives of transgender individuals, and acknowledging the hurdles they face in pursuit of justice. Legal aid, for the transgender community, extends far beyond the confines of legal representation. It symbolizes a gateway to justice, a bridge towards social equity, and a means to affirm the very essence of identity.<sup>3</sup> It envisions a legal support framework that is not only symbolic but is genuinely inclusive, responsive, and equitable for all individuals regardless of their gender identity.

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<sup>2</sup> Singh, A. (2020) *India's new law on the protection of rights of transgender persons*, *International Bar Association*. Available at: <https://www.ibanet.org/article/0F3AE21B-0170-4BF7-95DD-45B07EF1CAF6> (last visited on 01 October 2023).

<sup>3</sup> Kapoor, Aakash, *Access to Legal Aid for Transgender Individuals in India*, 29(4), *LAW AND SOCIETY REVIEW* Q. 521-539 (2020).

As we embark on this exploration, the intent is clear to contribute to the ongoing discourse on transgender rights by unravelling the intricacies of their experiences within the legal aid system.<sup>4</sup> Through this research, we strive not only to document challenges but to illuminate a path forward, advocating for reforms that go beyond symbolic recognition and creating a legal support framework that is truly inclusive and responsive to the diverse needs of transgender individuals in India.

## II. LITERATURE REVIEW

**Gender and Identity:** An analysis of rights of transgenders. Sambodhi, et al (2023), aims to establish the unequal identity status and its acceptance for transgender, in society. The socio-legal issues of the transgenders are also addressed. Hitabhilash Mohanty & Susampad Hota, et al (2021), In the wake of equality- The realization of the rights of transgender persons in India. It emphasizes on the terminology “Transgender” in the Indian context with the inference of interpretations through various judgments by the Supreme Court and the timeline through which the process of recognition of the rights of transgenders occurred. Yamini, et al (2021), Legal Framework for protection of rights of transgenders in

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<sup>4</sup> James, S. (2016) *Transequality, NATIONAL GENDER FOR TRANSGENDER EQUALITY*. Available at: <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (last visited on 10 October 2023).

India. It analyses the legal protection provided to the rights of transgender and their implementation. Fauzi Iqbal Hibatulloh, Gayathri Widya Indryani, Misa'al Rizqulloh Al Qodir and Wahyuni Erlin Mulyadi, et al (2020), *Discrimination and Legal Protection of Transgender: What can we Learn?* It highlights the discrimination experienced by transgenders and the regulations addressing it.

Reddy (2019) and Das (2020) underscore the difficulties faced by transgender individuals in obtaining legal recognition of their gender identity. However, these studies also highlight the limitations, with reports of discrimination and cultural insensitivity within legal aid institutions.<sup>5</sup> Research by Sen (2017) and Patel (2021) emphasizes the crucial role of legal aid in ensuring access to justice. Initiatives for sensitization and training are recommended to address their deficiency. Administrative hurdles, lack of awareness among legal professionals, and a dearth of transgender-sensitive policies are identified as significant barriers.<sup>6</sup> It highlights the limitations posed by the digital gap, making it imperative for legal aid services

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<sup>5</sup> *Id.*

<sup>6</sup> Porsch, Dayananda, (2016) An exploratory study of transgender New Yorkers' use of sexual health services and interest in receiving services at Planned Parenthood of New York City, Transgender health. Available at: <https://pubmed.ncbi.nlm.nih.gov/28861537/> (last visited on 25 September 2023).



to adopt strategies that bridge this divide and ensure equitable access to information.<sup>7</sup> Research by Mehta (2018) suggests that community-led awareness programs contribute to enhancing the agency of transgender individuals in navigating legal systems. Recognizing and addressing these intersectional challenges is crucial for ensuring justice for all transgender individuals. These initiatives foster a sense of empowerment and knowledge about available legal aid services. Studies by Verma (2017) and Dasgupta (2021) emphasize the need for policy reforms to make legal aid services more responsive and inclusive. The inclusion of transgender-specific provisions within legal aid policies is identified as a crucial step forward.<sup>8</sup>

### **III. RESEARCH GAP**

Certain research gaps emerge, highlighting areas that warrant further investigation and scholarly attention. Recognizing and addressing these gaps is essential for the continued evolution of knowledge in the field of transgender rights and legal aid services in India. Investigating the rural-urban disparities in accessing

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<sup>7</sup> Rosario M, Schrimshaw EW, Hunter J, Braun L. Sexual identity development among gay, lesbian, and bisexual youths: consistency and change over time, *J Sex Res.* 2006;4 3(1):46-58.

<sup>8</sup> Naina Kapoor, *Navigating Identities: A Study of Transgender Activism in Urban India*, 'Journal of Human Rights Studies' 28(3): Q 412-430 (2022).

legal aid services can uncover unique obstacles and shed light on the variations in the support systems available in different settings. Moreover, a research gap lies in the absence of a comparative analysis between the experiences of transgender individuals and other marginalized groups within the legal aid system. Comparative studies could highlight commonalities and distinctions in the challenges faced by different marginalized communities, contributing to a more inclusive and intersectional understanding of legal aid services.

#### **IV. METHODOLOGY**

This research has adopted the interview method to set foot in a conclusion. The interviewed participants are part of the Transgender's Association, Kolathur, Chennai, Tamil Nadu. The sample size of twelve participants were focused on individual experiences, and broader systemic issues may not be fully captured within this qualitative framework. The data were collected through personal interviews using a structured questionnaire. It was designed to elicit participants' experiences, challenges faced, and perceptions of legal aid services. Participants were provided with detailed information about the study, and informed consent was obtained prior to each interview, ensuring a commitment to ethical research practices.

The method employed is a manifestation of qualitative research strategy, acknowledging the

nuanced and subjective nature of the research objectives. The qualitative approach is deemed most suitable for capturing the diverse and varied experiences of transgender individuals in accessing legal aid services. Through in-depth interviews, the research aims to delve into the intricacies of their narratives, providing a holistic understanding of the challenges faced. The sample will include those who have interacted with legal aid services, ensuring a spectrum of experiences.

## **V. FINDINGS**

There have been instances of discrimination has been faced by transgenders earlier. But at present, there has been no such disparity confronted by them. The 2014 judgment of *NALSA v. Union of India*,<sup>9</sup> and after 2019, an immense change in the acceptance of Transgender community by society.<sup>10</sup> They are also aware of all the legal benefits and rights available to them in the current scenario, where they have also been availing benefits of legal aid services through the District Legal Services Authority and the National Legal Services Authority. The Transgender's Rights Association, Kolathur has been receiving funds from a nodal agency named "SWASTIK". A trans kitchen

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<sup>9</sup> AIR 2014 SC 1863.

<sup>10</sup> Transgender Persons (Protection of Rights) Act, 2019, No. 40, Acts of Parliament, 2019.

has also been set up in order to provide employment opportunities to the Transgender community.<sup>11</sup>

The participants also set up a legal awareness camp where judges, advocates, police, doctors, and even other people belonging to the legal fraternity are a part of it. Apart from this, they have also experienced massive support from the legal fraternity in providing legal awareness to the common people about the third gender and the rights associated with it.

On the other hand, the findings also infer that although there are sundry legal instruments to protect them, transgender individuals urge for the proper implementation of these legal instruments. They are of the persuasion that there is a lack of adequate implementation of these legislations. A reservation of 3% in government jobs is another suggestion put forward in order to enhance employment opportunities and to be treated at par with other genders in society. In certain areas of the law, they urge a need for additional support and information specific to transgender experiences, especially family and healthcare. These are nuanced legal domains where a deeper understanding can significantly impact the outcome. To enhance legal

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<sup>11</sup> Jayaraman, P. (2021) *Transforming the trans community, Madras Musings We Care for Madras that is Chennai Transforming the Trans Community Comments*. Available at: <https://www.madrasmusings.com/vol-31-no-8/transforming-the-trans-community/> (last visited on 19 November 2023).

aid services for the transgender community, a two-pronged approach has also been inferred. First, cultural competency training for legal professionals is paramount. Understanding the unique challenges we face ensures a more empathetic and effective service. Second, creating easily accessible and updated resources, perhaps through online platforms, would empower individuals to navigate their legal journey with confidence and accuracy. Developing more accessible and detailed educational resources specific to these processes would empower individuals to navigate the system with greater clarity. Moreover, while progress has been made in legal protections, there is still a need for more comprehensive measures, especially in areas like employment and healthcare. Strengthening existing laws and expanding protections is crucial for the well-being of the transgender community.

## **VI. CONCLUSION**

In conclusion, this research delves into the complexities of transgender individuals' experiences within the legal aid system in India, uncovering multifaceted challenges and proposing actionable recommendations for a more inclusive future. As we reflect on the findings and recommendations, several key insights and considerations emerge.<sup>12</sup>

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<sup>12</sup> *Id.*

The interviews conducted in this research unveiled the lived experiences of transgender individuals navigating legal aid services.<sup>13</sup> These narratives showcased a diverse spectrum of challenges, ranging from discrimination and lack of cultural sensitivity to systemic barriers hindering access to justice. The richness of these stories underscores the urgent need for transformative interventions.<sup>14</sup>

A recurring theme in the findings is the necessity for cultural competency within legal aid services. Transgender individuals often encounter dismissive attitudes and insensitivity from legal professionals.<sup>15</sup> The recommendation for mandatory cultural competency training emerges as a critical step to bridge this gap, fostering an environment that respects and understands diverse gender identities. The call for community-led legal awareness initiatives and the establishment of transgender-friendly legal support networks emphasizes the importance of collaboration. Strengthening partnerships between legal aid services and LGBTQ+ organizations can

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<sup>13</sup> Public Facilities Privacy and Security Act, 2016 NC Sess Laws 3, <http://www.ncleg.net/Sessions/2015E2/Bills/House/PDF/H2v4.pdf> (last visited Oct. 9 2023).

<sup>14</sup> Stotzer, R. L. Violence against transgender people: a review of United States data, *Aggress Violent Behav*; 14(3) Q:170-179 (2022).

<sup>15</sup> Meera Verma, *Challenges in Implementing Legal Aid Programs for Transgender Communities*, *JOURNAL OF SOCIAL JUSTICE AND LEGAL AID*, 42(3) Q:210-228 (2019).

amplify outreach efforts, ensuring that transgender individuals are not only aware of their rights but are also connected to a supportive network that understands their unique needs. Recognizing the digital divide, recommendations highlight the importance of enhancing digital accessibility within legal aid services. Additionally, the call for policy reforms underscores the need for proactive measures that explicitly address transgender inclusivity.<sup>16</sup> These recommendations are pivotal in shaping a legal aid landscape that reflects the principles of equality, accessibility, and responsiveness.<sup>17</sup>

The implementation of a monitoring and evaluation mechanism within legal aid services becomes crucial for ensuring the sustained effectiveness of inclusive measures. Transparency and accountability are paramount. By regularly soliciting feedback from transgender individuals and adapting strategies based on their experiences, legal aid services can evolve to meet the ever-changing needs of the community. This research not only identifies challenges but advocates for a paradigm shift – from legal recognition to meaningful, practical empowerment. The recommendations aspire to create a legal aid framework that goes beyond symbolic

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<sup>16</sup> *Id.* at 5.

<sup>17</sup> The Rights of Transgender Persons Bill, 2015, <https://www.prsindia.org/uploads/media/draft/Draft%20Rights%20of%20Transgender%20Persons%20Bill%202015> (last visited Oct, 10, 2023).

gestures, fostering an environment where transgender individuals feel affirmed, respected, and confident in seeking legal support.<sup>18</sup>

As we conclude, it is essential to recognize that the journey towards inclusive legal aid services for transgender individuals is ongoing.<sup>19</sup> Future efforts should continue to prioritize collaboration, awareness, and policy advocacy. Legal aid services have a pivotal role in shaping societal perceptions, influencing systemic changes, and championing the cause of justice for all, irrespective of gender identity. In essence, this research contributes to a broader dialogue on transgender rights by shedding light on the intricacies of their interactions with legal aid services. It is an earnest call for transformative action, urging legal aid services, policymakers, and society at large to move beyond mere acknowledgement of rights and actively work towards creating an inclusive and empowering legal environment for transgender individuals in India.<sup>20</sup> The path forward is one marked by collaboration, understanding, and a shared commitment to justice for all.

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<sup>18</sup> *Id.* at 2.

<sup>19</sup> United Nations, <https://www.un.org/en/sections/issues-depth/human-rights/> (last visited on 3 Oct, 2023).

<sup>20</sup> P. Singh, *Inclusive Policies: A Path Towards Transgender Rights in India*, MUMBAI: EQUALITY PRESS, Q: 102-125 (2017).



## **VII. SUGGESTIONS**

Here are a few suggestions that could be adopted in the current position for the proper implementation of the legislation and to strengthen the transgender community's rights for a better future:

1. The Legal professionals and staff within legal aid services should undergo mandatory cultural competency training. This training should focus on developing a nuanced understanding of transgender identities, issues, and unique challenges. Emphasis should be placed on fostering empathy instead of sympathizing, sensitivity, and respectful communication to create an inclusive and welcoming environment.
2. The creation of dedicated support networks within legal aid services specifically tailored to transgender individuals is essential. These networks can act as a resource hub, providing information, assistance, and emotional support. Trained professionals within these networks can offer guidance on legal processes, rights, and available services, ensuring a more personalized and responsive approach.
3. Empower transgender communities through community-led legal awareness programs. Collaborative efforts involving legal aid services, non-governmental organizations, and community leaders can organize workshops,

seminars, and information sessions. These initiatives aim to increase awareness about legal rights, available support services, and avenues for seeking legal aid.

4. Advocate for policy reforms within legal aid services that explicitly address the unique needs of transgender individuals. This includes incorporating transgender-inclusive language,<sup>21</sup> provisions, and guidelines into existing policies. Proactive measures should be taken to eliminate any discriminatory practices and promote equal access to legal aid services for all individuals, irrespective of gender identity.
5. Recognizing the digital divide, legal aid services should implement strategies to enhance digital accessibility. This includes providing online resources, virtual consultations, and user-friendly interfaces that cater to the diverse needs of transgender individuals. Ensuring that online platforms are inclusive and user-friendly is crucial for bridging accessibility gaps.
6. Legal aid services should establish and strengthen partnerships with LGBTQ+ organizations and community groups.

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<sup>21</sup> HANDBOOK ON COMBATING GENDER STEREOTYPES, Supreme Court of India, [https://main.sci.gov.in/pdf/LU/04092023\\_070741.pdf](https://main.sci.gov.in/pdf/LU/04092023_070741.pdf) (last visited Nov. 10, 2023).

Collaborative efforts can facilitate outreach programs, legal clinics, and awareness campaigns. Such partnerships create a network of support, connecting transgender individuals with both legal aid services and broader community resources.

7. Extend awareness programs to law enforcement agencies to sensitize them to the needs and rights of transgender individuals. Collaboration between legal aid services and law enforcement can contribute to a more supportive and respectful approach when interacting with transgender individuals. This can reduce instances of discrimination and improve overall legal experiences.
8. Implement a robust monitoring and evaluation mechanism within legal aid services to assess the effectiveness of inclusive measures. Regular feedback from transgender individuals accessing legal aid services should be solicited, and the outcomes should inform ongoing improvements. Transparent reporting on inclusivity metrics can encourage accountability and foster continuous improvement.
9. Develop specialized legal aid programs that specifically address the unique legal challenges faced by transgender individuals. This could include dedicated legal clinics, pro bono services, and legal representation initiatives tailored to transgender legal needs. These

programs should be designed collaboratively with transgender communities to ensure relevance and effectiveness.

10. By Launching public awareness campaigns to destigmatize transgender identities and promote a more inclusive societal attitude. Legal aid services can play a pivotal role in spearheading campaigns that challenge stereotypes, dispel myths, and encourage acceptance. These campaigns should emphasize the importance of legal aid services as a resource for transgender individuals seeking justice.

## Chapter - 13

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### **FREE LEGAL AID: AN OVERVIEW**

Dr. Madhu Bala\*

Dr. Poonam Lamba Chahal\*\*

#### **Abstract**

Law is a social science, and it faithfully reflects the nature of life lived by society. It keeps on moving with economic, scientific and technological developments. Therefore, law in order to meet the changing requirements should keep on evolving itself. The very centre stage of democracy is to conduct a fair trial for those who are accused of commission of a criminal offence. A fair trial is one of the important components of jurisprudence of the criminal justice system, thereby a dispensable facet of a democratic polity that is governed by rule of law, because poverty and law are so interdependent and interlinked to each other. In order to achieve the objective enshrined in article 39A and with the object of providing free legal aid, the legislation has been enacted wherein eligible persons shall have the

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access to justice without facing any financial disability. The Legal Services Authority Act, 1987 has been passed to provide free legal aid to eligible persons for filing or defending a case. The judiciary, via substantial judicial interventions, also guides the legislature to enact appropriate legislation to bring justice to the doorsteps of the weakest elements of the society. The researchers in this article proposed to go through the Indian legislations committed to ensure legal aid without cost to marginal sections of society. The functioning of Law Schools for providing legal aid to entitled persons is also dispensable. The judiciary's stance has also been considered, especially public interest litigation that shows how the Indian judiciary has been at the forefront of Indian citizens' rights, particularly those of the impoverished. The international human rights law also committed to follow the concept of legal aid, which is an essential component of a fair, humane, and efficient system of administration of justice

**Keywords:** Legal Aid, Fundamental Right, Democracy, Law Schools, Constitutional Rights.

## **I. INTRODUCTION**

The soul of democracy is to provide a fair trial for those who are accused with charges of criminal offence as their right to represent is not curtailed and get justice to all. A fair and just trial is one of the important elements of the justice system of a nation. As the

democratic state is governed by rule of law, fair and just trial is therefore, a dispensable facet of it.

As observed in the case of *Ajay Kumar Chaudhary v. Union of India*, Legal exception of expedition and diligence is present at every stage of criminal trial, and a *fortiori* in disciplinary proceedings. The Criminal Justice System is based on notions of fair trial, speedy trial, and free legal aid, thereby legal aid to be provided to all poor and deserving needy persons who are arrested. It has been observed by the Supreme Court that legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39 A but also by Article 14 and 21. In the absence of legal support, there are chances of injustice. Every act of injustice corrodes the foundation of democracy. The court has upheld the right to free legal aid to be provided to the poor accused persons “not in the permissive sense of Article 22(1) and its wider amplitude but in the peremptory sense of Article 21 confined to prison situations.”<sup>1</sup>

The Legal Aid was evolved due to response to new social, economic, and political conditions and to forms of modernity. It evolved due to the growth of industrialisation, the rise of liberalism, capitalism and the creation of sovereign States. The growing

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<sup>1</sup> M P Jain, *Indian Constitutional Law* 1187 (LexisNexis 2018).

environment of legal professional class and new concepts of benevolence, philanthropy and reform give rise to modern forms of organised legal aid.<sup>2</sup>

## **II. CONSTITUTIONAL GUARANTEE OF FREE LEGAL AID**

The Supreme Court has felt the need to humanise the administration of criminal justice, and thereby took a big innovative step and advocated for free legal assistance to be provided by the State to poor or indigent people facing criminal charges and prison sentences. When an accused has been sentenced by a court, but he wants to file an appeal against a lower court decision, then if he claims for legal aid on the ground of his indigency and incapacity to pay counsel charges, he must be provided free legal aid. The Court has emphasised that the lawyer's services constitute an ingredient of fair procedure to a prisoner who is seeking his liberation through the court's procedure.<sup>3</sup>

The Supreme Court has observed that the right to proper legal assistance comes under Article 21. The totality of circumstances should be considered to find out if there is a reasonable probability that in the absence of alleged errors by defence counsel causing

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<sup>2</sup> Felice Batlan & Marianne Vasara-Aaltonen, *Histories of Legal Aid: A Comparative and International Perspective 2* (Palgrave Macmillan 2021).

<sup>3</sup> *M.H. Hoskot v. State of Maharashtra*, A.I.R. 1978 S.C. 1548 (India).



prejudice, the court independently reweighing evidence, aggravating and mitigating circumstances would not have awarded death sentence.<sup>4</sup> 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 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 that stage. The accused can also claim free legal aid after he has been sentenced by court, but is entitled to appeal against the verdict.<sup>5</sup>

Justice Bhagwati has emphasized that it is the legal obligation of the magistrate or judge before whom the accused is produced to inform him that if he is unable to engage a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. Legal aid would become a paper promise and it would fail in its purpose. The trial judge is therefore obligated to inform the accused that if he is unable to engage a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State.<sup>6</sup>

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<sup>4</sup> Ashok Debbarma v. State of Tripura, (2014) 4 S.C.C. 747 (India).

<sup>5</sup> *Supra* note 1.

<sup>6</sup> Khatri v. State of Bihar, A.I.R. 1981 S.C. 928 (India).

In *Cardamom Marketing Corporation v. State of Kerala*, the Government of Kerala in exercise of powers under section 76 clause 1 of Kerala Court Fees and Suit Valuation Act, 1959 authorised the terminals and epilator is too Lavy additional code feel in respect of each appeal or revision and the amount so collected was to be credited to the Kerala Legal Benefit Fund. The Supreme Court has observed that the purposes for which the fund was to be utilised was for providing efficient legal services for the people of the State, which amounts to *quid pro quo*.<sup>7</sup> The Supreme Court has held that access to justice will be more of an illusion, if the adjudicatory mechanism provided is so expensive as to deter a disputant from taking resort to the same.<sup>8</sup> Legal aid to the needy has been recognised as one of the facets of access to justice and affordability of justice has been to an extent taken care of by the State sponsored legal aid programs under the Legal Services Authorities Act, 1987.

The Act was amended in 2002 making it mandatory for the central authority or every State authority as the case may be to establish permanent Lok Adalat in respect of public utility services. Article 39A puts stress upon legal justice. Put simply, the directive

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<sup>7</sup> *Cardamom Mktg. Corp. v. State of Kerala*, (2017) 5 S.C.C. 255 (India).

<sup>8</sup> Unique Legal Database, Law Web, Constitutional bench Supreme Court Judgement delineating Four main facets of access to justice - part of Article 21.

requires the State to provide free legal aid to deserving people so that justice is not denied to anyone merely because of economic disability.<sup>9</sup>

Earlier, in *State of Madras v. Champakam Dorairajan*, 1951 SCC 351 (India) it was held that the Directive Principles of State Policy have to confirm and run as a subsidiary to the chapter of Fundamental Rights. But in *Golak Nath v. State of Punjab* (India) AIR 1967 SC 1643 (India) the Supreme Court departed from the rigid rule of subordinating directive principles and entered the era of harmonious construction. Further the Constitution Bench in *Mohammed Hanif Qureshi v. State of Bihar* (India) chose to make headway and held that the Directive Principles nevertheless are fundamental in the governance of the country and it is a duty of the State to give effect to them.<sup>10</sup>

### **III. LEGAL AID AND INTERNATIONAL SCENARIO**

International law encompasses agreements and treaties between countries, regulating their interactions. Legal aid, on the other hand, involves providing assistance to individuals who may not afford legal representation. In the international context, organizations have been working to promote access to justice globally. Various treaties address

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<sup>9</sup> *Supra* note 3 at 1485.

<sup>10</sup> *Supra* note 10 at 256.

human rights, humanitarian law and trade shape the legal landscape between nations. Legal aid initiatives often collaborate with international bodies to ensure fair representation and access to justice for individuals across borders.

On December 10, 1948, the Universal Declaration of Human Rights was formally adopted by the United Nations (UN) General Assembly. Its goal was to promote a global culture of respect for human rights and freedoms. The preamble and thirty Articles of the Declaration outline the rights and liberties that are guaranteed to every person.<sup>11</sup>

“The protection of people’s rights to get impartial justice with fair trial, equality before the law, and the ability to seek redress for a grievance, depend on their having effective access to state courts and administrative tribunals. International human rights law guarantees these essential elements. For many people around the world, however, such access is unavailable. These people are denied access to justice because of a variety of factors, including poverty, a lack of financial resources or access, physical barriers, institutional and legal discrimination, a lack of knowledge about one’s rights and the justice

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<sup>11</sup> Anil Kumar Sharma & Aradhana Parmar, *Concept of Free Legal Aid*, 18 INT’L J. ADVANCES & SCHOLARLY RES. ALLIED, no. 7, Dec. 2021, <https://ignited.in/I/a/306149>.

system, language barriers, a lack of institutional capacity and support, and other factors.”<sup>12</sup>

“The UN Human Rights Council (HRC) recognized that legal aid is an essential component of a fair, humane, and efficient system of administration of justice based on the idea of rule of law in a resolution approved on June 13, 2013, and emphasized the significance for States to create and administer a legal aid system that is effective and sustainable in accordance with their international human rights duties and takes relevant commitments into consideration and best practices, as well as ensuring that legal aid is available at all phases of the criminal justice system subject to acceptable eligibility standards and in compliance with international law Human rights legislation.”

The International Covenant on Civil and Political Rights (ICCPR) emphasizes States’ obligation to provide effective remedies when rights are violated, specifically through “competent judicial, administrative, or legislative authorities, or any other competent authority provided by the legal system of

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<sup>12</sup> *The Right to Legal Aid: A Guide to International Law Rights to Legal Aid*, LAWYERS’ RTS. WATCH CAN. (2014), <https://www.lrwc.org/ws/wp-content/uploads/2014/09/International-Rights-to-Legal-Aid-w-clean-covers.pdf>.

the country.”<sup>13</sup> The right of individuals facing criminal accusations to have legal help assigned to them is affirmed in Article 14(3)(d) of the ICCPR. If the interests of justice demand that such help be offered without payment by him or her, if he or she lacks the financial wherewithal to pay for it. The ICCPR emphasizes that all persons are equal before the law and are entitled to equal protection of the law without any discrimination.<sup>14</sup>

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UN Principles and Guidelines) require nations to ensure that effective legal aid is provided quickly at all levels of the criminal process including all pre-trial proceedings and hearings.<sup>15</sup>

According to the Principles, professional groups of attorneys should collaborate in the Services, facilities

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<sup>13</sup> *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

<sup>14</sup> *Global Study on Legal Aid*, U.N. Off. on Drugs & Crime (2016), [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global\\_Study\\_on\\_Legal\\_Aid\\_-\\_FINAL.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf).

<sup>15</sup> Asher Flynn & Jacqueline Hodgson, et al., *Legal Aid and Access to Legal Representation: Redefining the Right to a Fair Trial*,

[https://law.unimelb.edu.au/data/assets/pdf\\_file/0006/2099373/06-Flynn-et-al.pdf](https://law.unimelb.edu.au/data/assets/pdf_file/0006/2099373/06-Flynn-et-al.pdf).

and other resources are organized and provided.<sup>16</sup> Under the United Nations Body of Principles for the Protection of All Persons Subjected to Any Form of Detention or Imprisonment, a detained person has the right to have legal counsel assigned to him or her by a judicial or other authority in all cases where the interests of justice so require, and without payment by him or her if he or she does not have sufficient funds to pay. Untried inmates are permitted to ask for legal help if such aid is provided, according to the United Nations Standard Minimum Rules for the Treatment of Prisoners.<sup>17</sup> According to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, adolescents have the right to be represented by a legal advisor throughout proceedings or to ask for free legal assistance where such aid is available in the nation.

The United Nations Rules for the Protection of adolescents Deprived of Liberty state that adolescents who are detained under arrest or awaiting trial have the right to legal counsel and the ability to ask for free legal aid when such aid is available.<sup>18</sup>

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<sup>16</sup>*United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, INT'L CTR. FOR CRIM. LAW REFORM & CRIM. JUST. POL'Y, <https://icclr.org/wp-content/uploads/2019/06/beijing.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

#### **IV. CONSTITUTION OF THE LEGAL SERVICES AUTHORITIES**

In order to achieve the objective enshrined in article 39A and with the object of providing free legal aid, the Government of India constituted a committee by resolution on 26 September, 1980 under chairmanship of Mr Justice P N Bhagwati for implementing legal aid schemes to monitor and implement legal aid programmes on uniform basis in all the states and union territories. The need was felt to constitute statutory legal authorities at the national, state and district levels so as to ensure effective implementation and monitoring of legal aid programmes. For the disposal of large numbers of cases expeditiously and without much cost, Lok Adalats have been constituted and they have been functioning as voluntary and conciliatory agencies without any statutory backing for their decisions.

Thereby the Legal Services Authorities Act, 1987 was passed with the object to constitute legal services authorities to provide free and competent legal service to the weaker sections of the society, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organise Lok Adalats to secure that



the operation of the legal system promotes justice on the basis of equal opportunity.<sup>19</sup>

Section 3 of the Act provides for the constitution of a body to be called the National Legal Services Authority (NALSA) by the central government to exercise the powers and perform the functions conferred on or assign to that authority under this Act.

The NALSA consists of the Chief Justice of India who is the pattern-in-chief. Further a serving or retired judge of the supreme court to be nominated by the President in consultation with the Chief Justice of India who is the Executive Chairman. The Authority has a number of other members possessing such experience and qualifications decided by the Central Government to be nominated by the Government in consultation with the Chief Justice of India.

The Central Government shall in consultation with the Chief Justice of India appoint a person as a member secretary of the Authority for exercising such powers and perform such duties under the Executive Chairman of the Authority. The Chief Justice of India shall also appoint a person as secretary to this Committee.

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<sup>19</sup> Preamble, *The Legal Services Authorities Act*, 1987, No. 39, Acts of Parliament, 1987 (India).

The central authority shall perform the functions as prescribed under section 4 of the Act. It shall lay down policies and principles for making legal services available under the provisions of this Act. It shall frame the most effective and economical schemes for the purpose of making legal services available under the provision of this Act.

The Central Authority shall take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection, or any other matters relating to the weaker section of the society and shall for the purpose provide training to the social workers in the legal skills. The committee is also required to organise camps in rural areas, slum areas or labour colonies for the purpose of educating the masses about their rights and to encourage them for the settlement of their disputes through Lok Adalats. The Central Authority shall encourage the settlement of the disputes by way of arbitration, negotiation and conciliation. It is required to undertake and promote research in the field of legal services for securing free legal aid for the poor.

Simultaneously, every state government shall also constitute a body namely the Legal Services Authority for the state to exercise the power and perform the

functions conferred on that authority under this Act.<sup>20</sup>

The State Authority shall comprise the Chief Justice of the High Court who shall be the pattern-in-chief. Then, a serving or retired judge of the high court to be nominated by the Governor with consultation of the Chief Justice of the High Court and he shall be considered as the executive chairman of the authority, and such other number of members and qualification as decided by the state government to be nominated by the government.<sup>21</sup>

The State Authority shall be duty bound to give effect to the policies and directions of the Central Authority. It shall give legal service to persons who are eligible as per the criteria given under the Act to get the free legal aid. The State Authority shall conduct the Lok Adalats including the Lok Adalat for the High Court cases. It is required to undertake preventive and strategic legal aid programs in rural as well as urban areas of the state and shall also perform other functions as may be required by the central authority.<sup>22</sup>

Like the Legal Service Authority at the state level, the state government shall also constitute a body to be called the District Legal Services Authority for every

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<sup>20</sup> *Id.*, § 4.

<sup>21</sup> *Id.*, § 6.

<sup>22</sup> *Id.*, § 7.

district in the state for performing the functions and exercising the powers given to that authority under the Act. The district authority shall be composed of a District Judge who shall be its chairman and such number of other members as may be prescribed by the state government to perform the functions of the State authority in the district as may be delegated to it from time to time by the State Authority.<sup>23</sup>

The State Authority, if required, shall constitute a committee to be named as Taluk Legal Service Committee for each Taluk or Mandals in which the senior most judicial officer shall be the ex officio chairman and it shall comprise of such number of other members as may be prescribed by the state government. The Taluk Committee shall coordinate activities of the legal services in the taluk.<sup>24</sup>

## **V. ENTITLEMENT TO LEGAL SERVICES**

A person is eligible to get free legal aid to file or defend a case under this Act if that person is a member of the schedule caste or schedule tribe or a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution; a woman or a child; a person with disability; a person under circumstances of undeserved want such as being a victim of mass disaster, ethnic violence, caste

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<sup>23</sup> *Id.*, § 9.

<sup>24</sup> *Id.*, § 11A.

atrocities, flood, drought, earthquake or industrial disaster or an industrial workman; or who is in receipt of annual income less than Rupees 9000<sup>25</sup> or such as prescribed by the concerned state government.<sup>26</sup>

The central government shall under this statute establish a fund to be named as the National Legal Aid Fund and all the amount received as a grant from the Central Authority or any other grant made to the Central Authority by any other person for the purpose of this Act or any amount received by the Central Authority under the orders of the any court which shall be applied for mitigating the cost of legal services provided under the statute, shall be credited in this fund.<sup>27</sup>

Similarly, the State Authority shall also establish a fund to be called the State Legal Aid Fund, and all sums of money received from the Central Authority as grants or any other amount received by the State Authority under the order of the court shall be credited to this account. And at district level, the district authority shall also establish a fund wherein all the sums of money received as grants from the State authority or any other amount received by the district authority under the orders of any court shall

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<sup>25</sup> *Id.*, § 12.

<sup>26</sup> It varies in States as per notification in Official Gazette of State, e.g., in Haryana the income limit is three lakhs.

<sup>27</sup> The Act, *supra* note 21, § 15.

be credited in this account for utilising the cost of functions to be performed by the district authority or for any other concerned expenses.<sup>28</sup>

Section 19 of the Act provides for the organisation of the Lok Adalat that every State Authority, or District Authority or the Supreme Court Legal Service Committee or every High Court Committee or Taluk Level Service Committee as the case maybe shall organise the Lok Adalat at such intervals and at such places as the authority deems fit.

Every Lok Adalat to be organised for an area shall consist of such number of serving or retired judicial officers and other persons as may be decided by the State authority.

## **VI. ROLE OF LAW SCHOOLS**

Law Schools play an important role in the career of budding lawyers as it helps to develop their ability to define, structure and internationalise professional norms, values and knowledge. In order to promote and execute legal aid programmes, law schools have large responsibilities towards budding lawyers. Law school should teach the students to tackle and resolve real life problems of the general public. The law institutes have the potential to shape and form the habits of students during the period in which

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<sup>28</sup> *Id.*, §§ 16–17.

their professional ideals and standards of ethics, decorum and conduct are being formed. The continuity and sincerity of the legal aid clinics at the Law schools and institutes much depend on the labour of love of teachers and students over the years. Initially, the legal aid programs were introduced on an *ad hoc* basis and faculty supervision was not much convincing. Moreover, the student's participation was neither consistent nor was the program supported by any prescribed curriculum for the law degree course.<sup>29</sup>

As per the rule 18 clause 1 subclause 3 of the Bar Council of India Legal Education Rules 2008, it is provided that a university seeking recognition of its degree in law for the purpose of enrolment in the Bar shall among other things possess facilities for imparting practical legal education specified in the curriculum under the rules and core training and moot Court exercises.

In order to make the functioning of the legal aid clinics in law colleges more effective, it is the requirement that all the law colleges should set up legal aid clinics and the same is to be informed to the State Legal Service Authority so that it shall further render the required technical assistance for the

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<sup>29</sup> Raman Mittal, *Legal Aid Clinic: Catalyst for Social Change*, 97 SATYAM L. INT'L, (New Delhi, 2012).

operation of clinics and shall take measures to promote the activities of such legal aid clinics.

Further the law students in the final year classes should render legal services in such a great clinic under the supervision of the faculty member of the institute. The State Legal Service Authority may organise alternative dispute resolution camps including lok adalats to resolve the problems of the people who visit such clinics for legal assistance. The District Legal Service Authority may also issue certificates to the students who complete their assignment in such legal aid clinics.

Regulation 9 of the NALSA Aid Clinics Regulations, 2011, includes a wide range of services that may be undertaken by the legal aid clinics. It provides that the legal services to be rendered at the legal aid clinic must be wide ranging in nature. The legal aid clinic shall work like a single window facility for helping the disadvantageous people to solve their legal problems whenever needed. The legal aid clinics may also advise other services like preparation of applications for job cards under the Mahatma Gandhi National Rural Employment Guarantee Scheme, identity cards for different government purposes, coordination with the government offices and public authorities for helping the common people who visit the clinic for solving their problems. With the government official authorities, other institutions can also be a part of the legal services in the legal aid clinic.



As per the requirement of the Legal Services Authorities Act, 1987, the law schools set up Legal Aid Clinics in its premises through which institutes are required to provide training to the law students in legal aid work. The law schools are required to sensitize the students that they should be motivated to assist and stand for the weaker section of the society whenever and wherever they see injustice is done to a person or whose rights are violated. There is a strong need to inculcate the values of justice, equality, liberty, freedom and human dignity among students to develop the passion to fight against injustice wherever they see it.

The law students should be trained in practical form about mediation programs as this form of alternative dispute resolution is the best form of attaining justice in many circumstances and it reduces the burden of courts as well. The capacity to work with compassion and intellectual curiosity should be developed among budding lawyers at this stage. Further, the modification in teaching methodology and study of emerging subjects at international level are the need of hour. The law subjects like Law and Poverty, Women and Law, Social Exclusion and Law should be added to the course structure so as to sensitise students on such issues and motivate them to work in the domain of free legal services.

In the case of *Anokhi Lal v. State of Madhya Pradesh* (2019) 20 SCC 196 (India) it was observed that right

to free legal service is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in guarantee of Article 21.

## **VII. JUDICIAL APPROACH TOWARDS FREE LEGAL AID**

The judiciary has been playing the vital role to dispense speedy and less expensive justice to the people. The judiciary directs and issues the guidelines to the legislature for enacting the suitable legal provisions in order to give justice to the indigenous people. This imperative approach of the judiciary is quite helpful for the economically weaker sections of the society to get free and speedy justice. One prominent example of doing so is public interest litigation that shows how the Indian judiciary has been at the forefront of India's rights, particularly those of the impoverished. Besides Social Interest Litigation and judicial activism, Lok Adalat is also one of the easiest judicial processes for issuing free legal aid and fast delivery of justice to the economically weaker people. The Supreme Court has also given landmark judgements in various cases relating to legal aid.

The Apex Court of India had given a landmark verdict by assuring the free legal aid to the indigenous people in case *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 98 (India).

The petitioners drew to the Court's notice that many of the individuals on trial had already suffered harsher punishment than they would have gotten if convicted earlier. This delay resulted from their inability to obtain legal assistance due to financial restrictions. In this decision, the Court emphasised that Article 39-A of the Constitution of India identified free legal assistance as an essential component of a "reasonable, fair, and just" process, which is guaranteed under Article 21. Two years later, in *Khatari v. State of Bihar*, A.I.R. 1981 S.C. 262 (India) The Supreme Court again reiterated that free legal assistance is a fundamental right of the person who are not able to arrange the services of a lawyer due their financial constraints. It is constitutionally mandated on the part of the State to provide legal assistance to the economically weaker people not only when they first time appear before the Magistrate, but also throughout the trial. Such persons cannot be deprived of this right on the basis of economic constraint, or that such persons have not applied to the State for a legal aid. It is the duty of judicial officers of the courts to inform the accused persons of these rights. To provide free legal aid to the indigenous people is one of the significant characteristics of the fair and reasonable process as guaranteed under Article 21 of the Constitution of India. It is the duty of the courts to provide counsel to the accused person at its own cost in order to ensure fair and speedy justice. The state cannot avoid its liability to provide free legal aid to the accused on

the basis of the economic and administrative constraints. Moreover, the State cannot deny the free legal assistance to the accused on the ground that the accused has not requested for the same. In case of *Suk Das v. Union Territory of Arunachal Pradesh*, AIR 1986 SC 991 (India) Justice P.N. Bhagwati emphasized to spread legal consciousness among the poor people. Due to lack of legal awareness regarding their rights, these people cannot get free legal assistance. Hon'ble justice again emphasised that the most of the people living in backward areas are neither educated nor aware about their rights. In addition to that, the legislation has guaranteed different rights to the people but unfortunately, a significant section of educated people is also not aware about their rights. To promote legal literacy is crucial for ensuring access to justice and upholding the rule of law. In many societies, including India, a lack of awareness about legal rights and entitlements can significantly hinder individuals' ability to navigate the legal system effectively. Without adequate legal literacy, individuals may not be aware of their rights, how to assert them, or where to seek help when facing legal issues. This can lead to situations where people are unable to defend themselves properly in legal proceedings. Justice Krishna was a prominent advocate for social justice in India, and his contributions to the legal system have had a lasting impact. As a proponent of social justice in India, hon'ble Justice interpreted the Articles 21 and 39-A of the Constitution of India as

both the provisions ensures the free legal aid to the indigenous persons. Moreover, under Article 142 of the Constitution of India, the Supreme Court has the power to provide the services of a counsel to people who are unable to hire an advocate due to lack of financial assistance for ensuring impartial and speedy justice,

For ensuring impartial and speedy justice The Supreme Court India again interpreted the provisions of the Constitution of India. The Rule of law is one of the basic features of the Constitution of India and access to justice is also an integral part of it. In case *Anita Kushwaha v. Pushap Sudan*, LAWS SC (2016)-7-72 (India),<sup>30</sup> A Constitutional Bench reaffirmed Part-III of the Constitution of India contains the provisions regarding free access to justice in the form of legal aid. The Supreme Court emphasized on four dimensions of access to justice:- the need of a functional judiciary for the resolution for the resolution of the dispute of the people, the geographical barriers should not hinder the people for accessing legal services and courts, there should not delay on the part of judiciary in delivering justice and cases should decide expeditiously, justice should be within the reach of the people, prohibitively high cost of litigation may deprive individuals to get

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<sup>30</sup> *Anita Kushwaha v. Pushap Sudha*, (2016) 8 S.C.C. 509 (India), <https://www.the-laws.com/Encyclopedia/browse/Case?CaseId=006102887000>.

remedies, so justice should be affordable to each and every individual without any financial limitations.<sup>31</sup>

In a landmark case *Mohammed Ajmal Mohammad Amir Kasab and Ors. v. State of Maharashtra*, (2012) 9 SCC 1 (India), the Court reaffirmed in case a person has been arrested in cognizable offence and produced before the Magistrate, his right to get free legal rights arises immediately. The Magistrate is bound to make the accused fully aware of this right and failure to discharge this duty will render the Magistrate liable to departmental proceedings. However, the Court acknowledged that while failure to provide counsel at the beginning of the trial will vitiate the trial and resulting conviction and sentence, failure to provide counsel at the pre-trial stage may not have the same result. The accused may have a right to claim compensation against the State, but the case is not vitiated unless it is shown that this failure resulted in material adverse effect on the accused during the trial.

In case of *Anokhilal v. State of Madhya Pradesh*, A.I.R. 2020 S.C. 232 (India) The court found that the amicus curiae in this case were not given sufficient time to prepare, which denied the right to legal aid,

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<sup>31</sup> *Urgent Requirement: New Legal Aid System to Ensure Justice for the Poor*, FRONTLINE, (Aug. 23, 2022), <https://frontline.thehindu.com/the-nation/urgent-requirement-new-legal-aid-system-to-ensure-justice-for-the-poor/article65791609.ece>.

as it could not be said to be genuine and meaningful. The court quashed the conviction and sentence and directed a fresh consideration of the case. The Court prescribed the norms to deal with such a position and directed that where there is a possibility of life imprisonment or death sentence, the advocate with a minimum of 10 years' experience should be appointed as a legal aid lawyer. During confirmation of a death sentence in the High Court, experienced and senior advocates should be appointed as *amicus curiae* and should be given adequate time to prepare.

### **VIII. RECENT TRENDS**

Recently, Haryana Legal Services Authority, Panchkula, orchestrated a state level commendation ceremony, for honouring the best District Legal Services Authorities, Panel Advocates, Mediators and Para Legal Volunteers (PLVs).

In this, the HALSA launched the Victim Compensation Portal, and Instructions Manual – 2023, designed for online applications for streamlining the compensation process for eligible victims of crime across Haryana.

The Instructions Manual – 2023, crafted for DLSA, will serve as a comprehensive guide to the organization's processes, procedures, and expectations, facilitating smooth functioning. So, this type of felicitation programme motivates and encourages the advocates, law experts, PLVs, and

other legal fraternity members to do efforts for achieving the real purpose of access to justice by all.

November 9, 2023 is observed as 'National Legal Services Day' to mark the establishment of Legal Services Authorities on this day in 1995. The Legal Services Authority Act, 1987, aligns with Article 39 A of the Constitution of India, which aims to provide free and competent legal services to various categories of individuals.

## **IX. CONCLUSION**

The focus of legal aid is on justice, the effective application of welfare benefits, and the abolition of social and structural deprivation of the poor. It operates in compliance with the Legal Services Authorities Act of 1987, which serves as a framework for the delivery of free justice. The purpose of free legal aid services is to ensure the implementation of constitutional goals in letter and spirit and also to ensure that equal justice should be available to the oppressed and weaker segments of society. The Legal Services Authority Act, 1987 provides various modes for ensuring free legal aid to various sections of the society who are in need. Besides, Indian statutory laws, various international treaties are helpful for providing free legal aid to oppressed and weaker sections.

The most common reason that the people do not take legal aid services is because legal practitioners in the



panel of legal aid services do not only take legal aid cases, but they rely on private practice as it earns them more monetary benefits than a legal case. They tend to devote most of the time to attending or preparing for their private practice matters rather than on cases related to legal aid. At times, hearing their private practice matters and legal aid cases, or sometimes they are not prepared for the arguments. This pressurises them to skip the court proceedings of legal aid cases.<sup>32</sup> There is a need to resolve this problem also.

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<sup>32</sup> Jeet Singh Mann, *Comparative Legal Aid Systems and India* 9 (Routledge, New York, 2023).

## Chapter - 14

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# **THE PERTINENCE OF FREE LEGAL AID AND ITS AWARENESS AMONG THE POOR FOR THE WARRANT OF JUSTICE**

Anumita Kar\*

### **Abstract**

Justice is the paradigm of democracy. There cannot be a single society that can thrive and stand on its own without justice. And since India is a democratic society; justice is a vital component that must be safeguarded by all means. It does not go without saying that all persons, affluent or poor, should have equal access to justice. If justice is only served to a specific segment of society because they can afford it, then it might be claimed that justice is not served at all. The notion of justice is inscribed in the Indian Constitution as well. The Constitution provides for justice to be secured in the Indian Republic. The Preamble to the Constitution speaks of social, economic, and political justice, as well as equality of status and opportunity. No justice or equality of status or opportunity can be granted until all people, regardless of their differences, have equal access to

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legal services. In other words, it means equal legal protection by protecting the rights of all people, particularly the poor, and providing appropriate remedies in the event of infringement of these rights. Free legal aid could be the way to ensure fair justice for society's most vulnerable members, i.e., the poor and downtrodden people of the country. This would ensure that the most economically disadvantaged do not lose access to the justice system. Legal professionals, government, and enlightened members of society should step up to raise awareness among the impoverished about the need to seek legal assistance in times of crisis. Free legal aid can be crucial in battling the impoverished people's daily battles. They cannot be denied their legal rights if they use legal aid effectively. When the socially and economically disadvantaged strata are aware of the availability of free legal assistance, it can be an essential tool in achieving justice.

**Keywords:** Legal aid, Fundamental Rights, Judiciary, Lok Adalat, Public Interest Litigation.

## **I. INTRODUCTION**

*“Legal Aid is fundamentally important in a democratic, civilized society”.*

-Jeremy Corbyn

India is a democratic state that grants a slew of rights to its citizens so that they may lead a decent life. However, it is not enough to simply provide some

rights; it is also necessary to ensure that those rights are effectively and evenly implemented among everyone, so that each and every individual may effortlessly benefit from the rights that are granted to them. In other words, in order for individuals to have a dignified existence, it is critical that they obtain justice if any of their rights are infringed. Even the Indian Constitution allows for a faster remedy in the event of breach of the people's basic rights, and as a result, any citizen whose fundamental rights are violated can seek direct access to the Supreme Court for justice. All of this is fine for the affluent sections of society, but for the poorer sections of the population, it is a pipe dream since they cannot easily access justice owing to their financial hardship and lack of awareness or knowledge of their rights. This is where free legal aid comes into play, ensuring justice for the less fortunate members of society.

The Preamble to the Constitution itself discusses the notion of Justice and prioritizes it *inter alia*, stating that the State should strive for social, political and economic justice. Thus, justice is one of the most important elements of the Indian Constitution, and giving justice to every citizen is the state's unfailing responsibility. The basic goal of the Constitution is to create a framework under which everyone, regardless of differences, receives legal protection and equal rights, as well as remedies if such rights are violated. Thus, in order to promote equitable justice in society, free legal aid is a crucial step so that the poor and

oppressed can access the justice system if their rights have not been acknowledged or are abridged. However, providing free legal aid is meaningless as long as the poor become aware of their rights and remedies, therefore it is also the state's responsibility to spread the word about legal aid among those who are impoverished. In this sense, free legal aid and its knowledge among the weaker strata of society contribute in achieving social justice.

## **II. WHAT IS LEGAL AID?**

Legal aid is the term for the free legal support given to the underprivileged and those in need who are unable to pay for legal representation in court. The legal aid system was established to guarantee that no segment of the population is refused competent representation in any judicial proceeding owing to fiscal limitations. The basic objective is to ensure that justice is served to all people, regardless of their social or economic status.

According to Justice P. N. Bhagwati, providing legal assistance involves organizing for society to make justice easily accessible and affordable for those who require it to uphold their legal and fundamental rights. It is rightly said by him that the impoverished and illiterate ought to have access to the legal system

and that their circumstances shouldn't prevent them from getting justice.<sup>1</sup>

The Indian Constitution defines legal aid. It declares that the state shall ensure that all persons get equal justice and shall offer free legal assistance through appropriate laws and programs to ensure that no one is denied justice because of financial disparities.<sup>2</sup>

In response, the Legal Services Authorities Act, 1987 was enacted to create legal services authorities to guarantee that citizens with economic or other disabilities have equal access to the legal system, to provide free and qualified legal assistance to the most vulnerable members of society, and to set up Lok Adalats to make certain that the legal system functions in an approach that advances justice equally.<sup>3</sup>

### **III. LEGAL AID IN INDIA**

#### **III.1. Pre-Independence Period**

Before the British arrived, the Indian rulers had a simple system in place for giving the impoverished

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<sup>1</sup> Kriti Madan & Swati Gupta, *Legal Aid in India*, LEGAL SERVICE INDIA (Jan. 2, 2024, 9:35 PM), <https://www.legalserviceindia.com>.

<sup>2</sup> INDIA CONST. art. 39A, *amended by* The Constitution (Forty-second Amendment) Act, 1976.

<sup>3</sup> The Legal Services Authorities Act, 1987, No.39, Acts of Parliament, 1987 (India).

access to justice that was both affordable and expedient. However, with the advent of the British, the method of administration of justice turned considerably more expensive than previously, necessitating the establishment of a legal aid system.

Since the Indians were unfamiliar with the British court system, it faced a significant credibility issue. The question of credibility surfaced in numerous key political trials, including Bahadur Shah Zafar shortly after the Sepoy Mutiny, and was literally refused an opportunity to retain counsel and finally banished. As such, it is plausible that the initial notion of legal help developed as a technique of successfully regulating the Indian people by reinstating their faith in the judiciary.<sup>4</sup>

A clause permitting the accused to be defended by counsel at state expense when facing the death penalty in sessions court was incorporated in the Code of Criminal Procedure, 1898. Nevertheless, the political significance of the issue mostly dictated whether or not this safeguard was extended. And, since, the protection provided was inadequate, and many strove to establish a means for the poor to be represented in the courts. This is when the Bombay Legal Aid Society, 1924 was founded with the intention of offering free legal assistance and paying

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<sup>4</sup> Nishant Gokhale, *The Evolution of Legal Aid in India*, LEGALLY INDIA (Jan. 4, 2024, 12:37 PM), <https://www.legallyindia.com>.

court expenses for the needy to get access to justice. Furthermore, the council also suggested, legal assistance and counsel be made available in India.<sup>5</sup>

### **III.2. Post-Independence Period**

Following independence, India faced a variety of socioeconomic issues, one of which is legal assistance, which is closely tied to the country's growth.

Soon after independence, the notion of legal aid can be observed when the Bombay Government created a Committee on Legal Aid and Advice in 1949, chaired by N.H. Bhagwati, to take up entirely the matter of delivering legal support to underprivileged persons in civil and criminal cases. The Committee urged that in order to ensure that low-income individuals and members of marginalized communities receive the justice they deserve, the judiciary should offer legal assistance to them.<sup>6</sup> Following that, various committees emerged to look into the subject of legal aid. These committees included the Bengal Committee, the Gujarat Committee, and others, and their proposals were comparable to those of the Bombay Committee on Legal Aid and Advice.

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<sup>5</sup> *Id.*

<sup>6</sup> Rakhi, *Genesis of Legal Aid in India*, Via Mediation & Arbitration Centre (Jan. 4, 2024, 8:19 PM), <https://viamediationcentre.org>.



A two-member Juridicare Committee, led by Justice P.N. Bhagwati and including Justice Krishna Iyer, was called by the Central Government in 1976. The committee advised the creation of a national free legal aid program and acknowledged the importance of law schools in offering legal assistance. Additionally, it placed a strong focus on conflict before filing a case resolution through out-of-court discussions and mediation of disputes. Furthermore, it requested that groups of volunteers and students of law assist in implementing its proposals. But, the 42nd Amendment was ratified, inserting Article 39-A, which mandated that the State make every effort to provide legal aid, in an attempt to negate the efficacy of the Committee.<sup>7</sup>

However, in order to make legal aid more effective, the Legal Services Authorities Act, 1987 was passed to promote the goal stated in Article 39A. This statute extended legal assistance to disadvantaged people beyond the poverty-based concept.

Furthermore, the Indian Constitution, through its numerous provisions, supports the provision of legal assistance, since Article 14 requires the State to provide equality before the law and a judicial system that promotes justice on the basis of equal opportunity to all. Again, in certain situations, Article

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<sup>7</sup> Varun Pathak, *A Brief History of Legal Aid*, LEGAL SERVICE INDIA (Jan. 4, 2024, 9:19 PM), <https://www.legalserviceindia.com>.

22 protects against arrest and imprisonment. Therefore, anyone who is detained without notice enjoys the right to speak with and be represented by a lawyer of their choice. Later, under Article 21 of the Constitution, the right to free legal help was recognized.

Justice Krishna Iyer stated, "This right to free legal aid is the duty of the government and is an implicit aspect of Article 21 in ensuring fairness and reasonableness; this cannot be termed as government charity".

#### **IV. JUDICIAL STANCE ON FREE LEGAL AID**

The maintenance of the rule of law depends on providing legal aid to the vulnerable and needy; without it, the uneducated and destitute are denied an equal chance to pursue justice. The courts are now playing a proactive role in offering legal assistance to individuals in need as a means of assisting the legal system in serving the underprivileged and impoverished. The Constitution aims to provide justice to all, and the judiciary is the custodian of this principle. The Constitution has empowered the judiciary to uphold its dictum and protect the rights of the people and society. It is, therefore, incumbent upon the judiciary to ensure that people's rights are safeguarded and upheld. The judiciary is actively working towards fulfilling this crucial responsibility of protecting the rights of the people and promoting a just society. The concept of

Public Interest Litigation (PIL) is a testament to the proactive role played by our judiciary in safeguarding the rights of every Indian citizen, especially those who are economically disadvantaged. It has empowered countless individuals with a sense of social responsibility to seek justice for those in need and bring about a positive change in the society.<sup>8</sup>

The most landmark Supreme Court decision was handed down in *Hussainara Khatoon v. Home Secretary, State of Bihar*,<sup>9</sup> in which the scope of Article 21 was expanded, declaring that each individual has a basic right to a fast trial under the aforementioned Article and emphasizing the importance of free legal aid in the administration of justice. In order to free 17 prisoners who are awaiting trial but have already been given sentences that are far worse than what they would have gotten had they been found guilty right away, a habeas corpus writ petition was submitted to the court in accordance with Article 32 of the Indian Constitution. The main cause of the wait was the failure to afford representation by lawyers in court, which was a result of their poverty. The state was ordered by the court to free the undertrials.

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<sup>8</sup> Dr. G. Mallikarjun, *Legal Aid in India and The Judicial Contribution*, 7, NALSAR LAW REVIEW 234, 234-235 (2013).

<sup>9</sup> *Hussainara Khatoon v. Home Secretary, State of Bihar*, 1979 AIR 1369, 1979 SCR (3) 532.

Subsequently, in *Khatri v. State of Bihar*,<sup>10</sup> Justice Bhagwati emphasized that the government cannot use budgetary or administrative challenges as a way out of its constitutional mandate to give legal assistance for free to the underprivileged. Article 39A, which must be interpreted as inherent in Article 21, imposes an implied constitutional duty on the government to offer free legal aid to an accused. This obligation extends beyond the trial to include the accused's initial appearance before the magistrate and subsequent remands.

Again, in *Suk Das v. Union Territory of Arunachal Pradesh*,<sup>11</sup> Enhancing legal knowledge among the impoverished is crucial, as Justice P.N. Bhagwati said, as they are mostly ignorant of their rights, especially the entitlement to free legal help. Additionally, he mentioned that a great deal of rural Indians is uneducated and ignorant of their legal privileges.

In the case of *Madhav H. Hoskot v. State of Maharashtra*,<sup>12</sup> Justice Krishna Iyer, a social justice activist, stated, "If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive

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<sup>10</sup> *Khatri v. State of Bihar*, 1981 SCR (2) 408, 1981 SCC (1) 627.

<sup>11</sup> *Suk Das v. Union Territory of Arunachal Pradesh*, 1986 AIR 991, 1986 SCR (1) 590.

<sup>12</sup> *Madhav H. Hoskot v. State of Maharashtra*, AIR 1978 SCC 1548, (1978) 3 SCC 544.

of special leave to the Supreme Court for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39A of the Constitution, the power to assign counsel for such imprisoned individual for doing complete justice. It is a statutorily recognized public duty of each great branch of government to obey the rule of law and uphold the trust with the constitution by making rules to effectuate legislation meant to help the poor.”

The laws were created to safeguard those in need, but governments have been sluggish in carrying them out. In *State of Haryana v. Darshana Devi*,<sup>13</sup> The Supreme Court noted the same thing and said that “the poor shall not be priced out of the justice market by insistence on court fee and refusal to apply the exemptive provisions of order XXXIII, CPC.”

Thus, the country's judiciary has demonstrated its responsibility in adhering to the mandate of justice provided by the Constitution by elevating the principle of free legal aid to the poor and disadvantaged in its various judicial decisions from time and again and has also adequately pointed out that it is the obligation of the state to provide free legal aid to them and create awareness regarding the same and the rights available to them.

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<sup>13</sup> *State of Haryana v. Darshana Devi*, AIR 1972 SC 855.

## **V. LEGAL AUTHORITIES ON FREE LEGAL AID**

In order to actualize the constitutional objective of granting access to justice as stated in Article 39A of the Indian Constitution, which went into effect on November 9, 1995, the Indian Parliament adopted the Legal Services Authorities Act, 1987. The Act authorized for the formation of Legal Services Institutions at all levels, from national to taluk. Providing the less fortunate members of society with free and expert legal assistance was one of the Act's purposes. Holding Lok Adalats to guarantee the development of justice was another purpose of the Act. Established by this Act, the National Legal Services Authority (NALSA) was tasked with monitoring and evaluating the performance of legal aid programs and developing guidelines and policies to make legal services available under the Act. Every state has formed a State Legal Services Authority, and every High Court has established a High Court Legal Services Committee. Whereas District Legal Services Authorities and Taluk Legal Services Committees have been established in the districts and in the majority of the Taluks to carry out the NALSA's rules and orders, offer free legal services to the public, and hold Lok Adalats in the State.<sup>14</sup>

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<sup>14</sup> Department of Justice, <https://doj.gov.in> (last visited Jan. 5, 2024).

Besides the legal services authorities, there are other organizations that work hard to provide legal aid services to the poor and disadvantaged such as the Committee for Legal Aid to Poor is a non-profit organization with the purpose of providing pro bono legal services to the marginalized and advocating for legal change. Another such organization is the Pro Bono India Legal Services was created in 2011 with the purpose of advancing equity and justice via the provision of free legal aid and assistance to the underprivileged, the building of civil society organizations through comprehensive legal support, and the pursuit of public interest litigation and legal reform. VARHAD was founded in 2001 by an alumnus of the Department of Criminology and an ex-Prayas employee. It gives convicts access to legal help, psychosocial support, and other services for both prisoners and their families.

The above-mentioned organizations are only a few examples of many other such organizations that work diligently to provide free legal aid to the poor and marginalized.

## **VI. CHALLENGES OF FREE LEGAL AID**

Despite the fact that there is an array of statutory provisions that guarantee free legal aid and various authorities and committees to ensure that the poor get justice through legal aid, there is a lack of proper implementation of those statutory provisions, which

indicates that justice is not always served to the poor and disadvantaged sections of society.

There is a lack of awareness about the provision of free legal aid because the services are intended for the poor and illiterate, with the main difficulty being that they are uneducated. Consequently, as a result of this dearth of legal knowledge, individuals are unaware of the essential and legal privileges. Another reason is that the advocates are reluctant to provide free legal assistance since they want to be paid adequately and are not interested in doing charitable work, and even when a few attorneys do contribute to these services, the quality is inadequate. Moreover, there is a scarcity of awareness programs, legal aid camps, as well as additional initiatives aimed at reaching out to the poor and underprivileged in order to educate people about their rights.<sup>15</sup>

Thus, it can be observed that there are several challenges in promoting legal aid among those in need that must be conquered in order to disseminate legal aid.

## **VII. CURRENT SCENARIO OF FREE LEGAL AID IN INDIA**

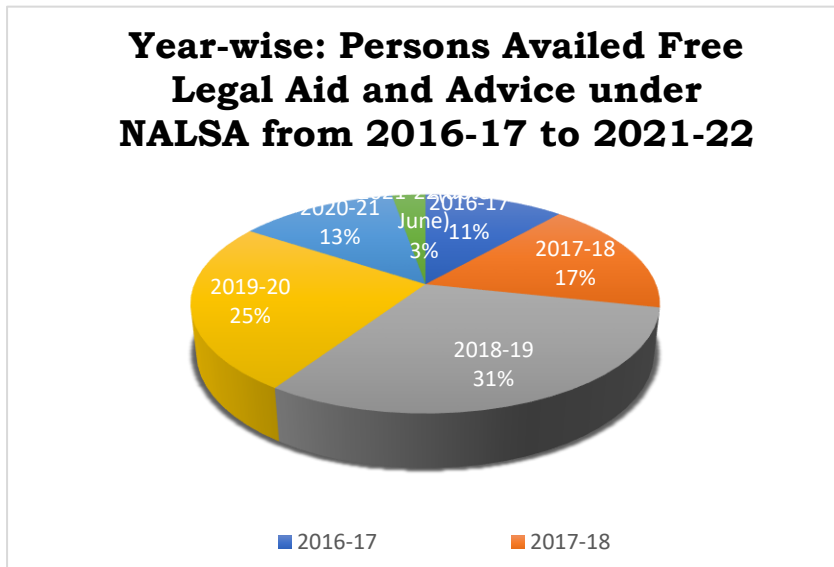
In marked contrast to prior decades, more than 1 crore individuals have benefitted from pro-bono

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<sup>15</sup> Beejal Ahuja, *Challenges and solutions to free legal aid*, IPLEADERS (Jan. 6, 2024, 2:42 PM), <https://blog.ipleaders.in>.



legal aid provided by legal services agencies in the last five years. Based on National Legal Services Authority (NLSA) figures, more than 1.03 crore persons received free legal assistance in India between 2017-18 and 2021-22 (up to January), approximately 60% of them were from 2021-22. The number of beneficiaries in 2021-22 outnumbers those in the four previous years (2017-18 to 2020-21), which recorded a total of 41.7 lakh persons as having benefited from such services.<sup>16</sup>



*Figure 1: Year-wise: Persons Aailed Free Legal Aid and Advice under NALSA from 2016-17 to 2021-22.<sup>17</sup>*

<sup>16</sup> Chethan Kumar, *Over 1cr got free legal service in past 5 years*, The Times of India (Jan. 5, 2024, 3:02 PM), <https://timesofindia.indiatimes.com>.

<sup>17</sup> Open Government Data (OGD) Platform India, <https://tn.data.govt.in>, (last visited Jan. 5, 2024).

### **VIII.NEED OF LEGAL AID AWARENESS IN INDIA**

The first and most important thing that the state and other non-governmental organizations must do is educate the public about legal aid provisions as well as their rights. Legal knowledge may assist people, particularly the poor and disadvantaged, in demanding justice and asserting their rights when any of those are violated. If they understand what they are entitled to, they will be able to engage in court procedures and obtain free legal assistance. Despite the fact that there are different provisions for free legal assistance for the poor, they are unable to access such services owing to lack of knowledge among them. By creating awareness on free legal aid, the poor and disadvantaged people will be encouraged to resist any injustice against them and to participate in the judicial process in order to get justice.

The government should launch legal awareness campaigns in rural areas and deliver lectures in native languages to guarantee that even illiterate people are informed of their rights. NGOs could potentially be engaged in order to help raise awareness among the people. The next move needs to establish a pro bono culture, and that the law students must receive social education so that they

can engage themselves in legal aid programs.<sup>18</sup> Moreover, there are several precedents and legislations that support the right to free legal assistance, but their inept execution has rendered them a fiction for the majority. Therefore, the necessity of the hour is to focus on the effective and thorough execution of existing laws rather than adopting new legislation to make legal assistance in the nation an actuality rather than a fiction in the eyes of citizens.

Thus, the availability and knowledge of free legal help to those with little education is critical in the country, in order to ensure they are informed about their rights and the judicial procedure in the case of injustices occurring to them.

## **IX. CONCLUSION**

The Indian Constitution extols fairness as one of the fundamental ideals underlying the Constitution. Thus, if justice is not delivered to each and every individual in society, it can be claimed that justice is not served at all. As a result, in an effort to bring justice to all, notably the impoverished and disadvantaged segments of society, legal assistance for free should be offered, as the needy are unable to

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<sup>18</sup> Akarshita Singh, *Legal Aid in India: current scenario and future challenges*, Manupatra (Jan. 9, 2024, 12:10 PM), <https://articles.manupatra.com>.

finance the judicial processes since these services are quite expensive. So, in order to uphold this, it is the state's obligation to render free legal services to the disadvantaged population, and this duty is stated in the Constitution itself.

It is not just enough to accord legal aid to the impoverished and uneducated; the state must also raise awareness about the legal services accessible to them and the rights they have as the majority of people are unaware about the legal structure of the country, as well as their protected rights. Although many people are aware of it, they are unable to bear the expense due to their financial and social backwardness. They are in an untenable predicament to afford the services of legal counsellors, which have become extremely expensive. The mandate of natural justice cannot be fulfilled unless and until all individuals are adequately represented in their cause. Consequently, it is vital to promote the notion of free legal assistance as much as possible, as well as create awareness by teaching the population, particularly the poor, about it, and also through different government campaigns and schemes. Only in this way can we safeguard the mandate of justice enshrined in the Indian Constitution.

## Chapter - 15

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# **A CRITICAL STUDY ON LEGAL AID CLINIC OFFERED IN GOVERNMENT LAW COLLEGES OF TAMIL NADU**

Hari Krishna\*

Dr. M.S. Sharmila\*\*

### **Abstract**

The evolution of clinical legal aid in law schools of India has a broad history that cannot be explained without giving a gist of the history of legal aid and its inception in India and its provisions. This article enumerates the various functions of legal aid clinics in Government Law Colleges in Tamil Nadu and suggests some inputs to make them function in an effective manner for the betterment of this society.

Every law institution is running its Legal Aid Clinic under the aegis of the District Legal Services Authority only but the Dr. Ambedkar Government Law College (now bifurcated) was functioning with Tamil Nadu State Legal Services Authority itself which was annexed to the College. Thus, we will study the role of the

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clinical legal aid program operating in GLC's of Tamil Nadu. A Further Study will also be done to justify why GLCs of Tamil Nadu are taken as subject even though legal aid programs are operating in many Higher Educational Institutions (HEIs) in the Country, to also examine the changes affecting the routine access by the law students and in the legal aid program which was offered at Dr. Ambedkar Govt. Law College, Chennai. Finally, a study will be done to map the scope of clinical legal aid in legal education and narrate the recommendation for the benefit of the law students.

**Keywords:** Legal education, Legal aid clinic, Legal Services Authority, Law Students, Access to Justice for all, Tamil Nadu.

## **I. INTRODUCTION**

Law is the basement of a stable nation or society and legal education is an essential ingredient to make it strong. Legal education generally means the education of a lawyer before their entry into practice. Legal education is a platform to make a person to social engineer. Law Institution creates many law-abiding citizens who are advocates, judges, academicians, legal researchers, inspiring jurists, etc. Similarly, the concept of Legal aid means pro bono services offered by lawyers to marginalized people for the proceedings before the court of law. Thus, Legal Aid Clinic is the combination of legal education and legal aid. Legal Aid Clinic was created as a place for economic and social progress. So that the Law Student will be trained as a

Good Social Engineer due to establishment of legal aid clinics in every institution offering a Law Program.

The establishment of legal aid clinics in legal education institutions is mandatory as per the Bar Council of India, Education Rules 2008. That Legal Aid Clinic must be affiliated with the respective District Legal Services Authority where the law school or law college is located.<sup>1</sup> The legal aid clinic cell in that law institute will be governed by a full-time faculty who engages both the law school and the respective District legal services Authority. The legal aid clinic is a platform for law students to participate in various activities such as organizing legal aid camps, special lectures, visiting prisons, participating in Lok Adalats, conducting rallies and other activities conducted or advised by the respective District Legal Services Authority from time to time.<sup>2</sup> The Legal Aid Clinic makes the students improve in orating skills, brings confidence in facing different kinds of people, and makes the student a well-behaved being which is

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<sup>1</sup> Dr. Deepak Miglani, Role of Legal Aid Clinic in Legal Education, SUSHANT UNIVERSITY BLOG, (last visted Nov. 10,2023,10:21AM) <https://sushantuniversity.edu.in/blog/role-of-legal-aid-clinic-in-legal-education/#:~:text=Every%20law%20school%20has%20to,aid%20clinic%20support%20and%20direction.>

<sup>2</sup> Dr. Deepak Miglani, Role of Legal Aid Clinic in Legal Education, SUSHANT UNIVERSITY BLOG, (last visted Nov. 10,2023,10:21AM) <https://sushantuniversity.edu.in/blog/role-of-legal-aid-clinic-in-legal-education/#:~:text=Every%20law%20school%20has%20to,aid%20clinic%20support%20and%20direction.>

important for this noble profession. Similarly, jail visits give the students an insight into the prison administration system, and conduct surveys on the conditions of jail inmates including prison staff.

Though some of the overall functioning factors of the legal aid clinic program in legal education are not satisfactory, these law schools can play a vital role in serving the motto of the Legal Services Authority which is “Access to Justice For all” if the Legal Aid Clinic in each law institute are used in an efficient manner and provide free legal aid to the needy. In this article, we are going to revisit the history of legal education in the state of Tamil Nadu and its development in establishing government law colleges in Tamil Nadu with special reference to Dr. Ambedkar Govt. Law College, Chennai.

## **II. HISTORY OF LEGAL AID AND ITS INCEPTION IN INDIA**

Legal aid is a concept of aiding a person who is poor and cannot afford a lawyer by himself to represent any proceeding before any judicial or quasi-judicial authority, such as tribunal or court. The introduction of legal aid was first witnessed in the year 1851 in France where they introduced legal Aid for indigent people in their country.<sup>3</sup> In 1944, Britain's Lord

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<sup>3</sup> LEGAL SERVICE INDIA, *A Brief History of Legal Aid*, <https://www.legalserviceindia.com/articles/laid.htm> (Last visited Nov 23,10:05am).



Chancellor Viscount Simon constituted the Rushcliffe Committee for initiating legal Advice by state to the poor and downtrodden people in England.<sup>4</sup> In the USA it is said that in the 1870s itself the legal aid programs were conducted but it was done with the help of lawyers who offered pro bono services to the poor and with philanthropic institutions. Then in the 1960s, only the Federal Government took initiatives to give civil as well as criminal legal aid services to the poor and needy people. In India it was started in 1952. The Government started addressing the legal aid to be given to the needy, but in the year 1980 a committee for implementing legal aid schemes was constituted under the chairmanship of Honourable Justice. P.N. Bhagwati and based on a report submitted by Justice. V.R. Krishna Iyer in 1973 and on a report submitted by Justice P.N. Bhagwati himself in 1971. Finally in 1987 the Legal Services Authority Act was enacted which came to full force in 1995.

### **III. LEGAL PROVISIONS OF LEGAL AID IN INDIA**

#### **Provisions in Constitution Law**

Originally there was no provision regarding free legal aid but through the Forty Second Amendment in 1976 this provision was added. Article 39A states that “state shall provide legal aid for free by way of

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<sup>4</sup> Legal Service India, *A Brief History of Legal Aid*, <https://www.legalserviceindia.com/articles/laid.htm> (Last visited Nov 23,10:10am).

suitable legislation to ensure that any citizen should not be denied the opportunities of securing justice because of any economic or other disabilities.” Even regarding Article 21 the Supreme Court has declared that Right to legal aid is the integral part in the case of Hussainara Khatoon v. State of Bihar.<sup>5</sup>

### **Provision in Criminal Procedure Code**

Section 304 of the CrPC. specifically defines that when the accused is not having any sufficient mediums to appoint or hire an advocate, then the court must appoint an advocate for defending on behalf of the accused at the expense of the government. This provision ensures that the accused gets legal representation on his side.<sup>6</sup>

### **Provision of Legal Services Authority Act, 1987**

This Act plays a vital role in establishment and functioning of National Legal Services Authority, State Legal Service Authority as well as district and Taluka level legal service authorities.

Bar Council of India- Rules of Legal Education, 2008

Schedule III (sub-section 11 of Act) clearly says that there must be Legal Aid Centre in Each institution

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<sup>5</sup> *Right to Free Legal Aid*, <https://lawbhoomi.com/right-to-free-legal-aid/>, (last visited at Nov 23, 2023).

<sup>6</sup> *Right to Free Legal Aid*, <https://lawbhoomi.com/right-to-free-legal-aid/>, (last visited at Nov 23, 2023).

offering law program (also HEI or Law Colleges) and run that Legal Aid Clinic under the direct supervision of a Senior law teaching Faculty Member who will administer that legal aid clinic to be operational by the final year students of the law institution in cooperation and collaboration with the Legal Aid Authorities with list of other non-government organizations and voluntary lawyers engaged in this regard in the locality where the course offering institution is situated.<sup>7</sup>

#### **IV. GOVERNMENT LAW COLLEGES OF TAMIL NADU- HISTORY AND FUNCTIONING OF LEGAL EDUCATION**

The legal education started its inception in Tamil Nadu (earlier known as Madras Presidency) in the year 1855 at the Presidency College, Madras with its first professor of law John Bruce Norton<sup>8</sup> and after several years H.B. Grigg, the director of public instruction gave his suggestion to establish a separate law college in Madras. Mr. Reginald. A. Nelson, who was appointed as the first principal of the law college, entered upon his duties on 2<sup>nd</sup> May

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<sup>7</sup> Bar Council of India-Rules of Legal Education, 2008, <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/BCIRulesPartIV.pdf>(last visited at Nov 24,2023).

<sup>8</sup> Chennai Dr. Ambedkar Government Law College, Pattarai Perambudur, <https://glcpr.ac.in/history-of-the-college-2/>(last visited on Nov. 10, 2023).

of 1891.<sup>9</sup> From that time onwards, the Law College was functioning at University of Madras, Senate Building. On 9<sup>th</sup> January 1899 the Prestigious Madras law College started function on its own building in the honourable Madras High Court Campus. Even though Government Law College, Mumbai is being claimed to be the oldest established Law Institution in Asia. The Government Law College, Mumbai started their whole time functioning of the law college only in 1938<sup>10</sup> but the whole time functioning of Madras law College started in 1899 itself. In the 1953 itself the Government of Tamil Nadu (earlier Madras) established the Directorate of Legal Studies to start new government law colleges around the state of Tamil Nadu and cater the needs of society, bar and bench.<sup>11</sup> As of now, there are 15 Government Law Colleges established and under the Administrative Control of Directorate of legal studies, Government of Tamil Nadu. The following are the list of Government Law Colleges in the state of Tamil Nadu.

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<sup>9</sup> Chennai Dr. Ambedkar Government Law College, Pattarai Perambudur, <https://glcpr.ac.in/history-of-the-college-2/> (last visited on Nov. 10, 2023).

<sup>10</sup> 2023 The Magazine Committee of Government Law College, Mumbai, <https://glcmag.com/glc/> (last visited at Nov.15,2023).

<sup>11</sup> Directorate of Legal Studies, <https://tndls.ac.in/> (last visited at Nov.15,2023).

**TABLE 1**

<b>S.No</b>	<b>College Name</b>	<b>Established</b>
1.	Chennai Dr. Ambedkar Government Law College, Pattarai Perambudur, Thiruvallur District, Tamil Nadu- 631203	2018 <sup>12</sup>
2.	Chennai Dr. Ambedkar Government Law College, Pudupakkam, Chengalpattu, Tamil Nadu – 631203	2018 <sup>13</sup>
3.	Government Law College, Madurai, Tamil Nadu – 625020	1974
4.	Government Law College, Trichirappalli, Tamil Nadu – 620023	1979
5.	Government Law College, Coimbatore, Tamil Nadu – 641046	1979
6.	Government Law College, Tirunelveli, Tamil Nadu – 627011	1996
7.	Government Law College, Chengalpattu, Tamil Nadu – 603001	2006
8.	Government Law College, Vellore, Tamil Nadu – 632006	2008
9.	Government Law College, Villupuram, Tamil Nadu – 605603	2017
10.	Government Law College, Dharmapuri, Tamil Nadu – 636701	2017

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<sup>12</sup> Bifurcated from Dr. Ambedkar Government Law College, Chennai in the year 2018 which was established in the year 1891.

<sup>13</sup> Bifurcated from Dr. Ambedkar Government Law College, Chennai in the year 2018 which was established in the year 1891.

11.	Government Law College, Ramanathapuram, Tamil Nadu – 623501	2017
12.	Government Law College, Salem, Tamil Nadu – 636010	2020
13.	Government Law College, Namakkal, Tamil Nadu – 637001	2020
14.	Government Law College, Theni, Tamil Nadu – 625534	2020
15.	Government Law College, Karaikudi, Tamil Nadu – 630003.	2022

All these above said Government Law Colleges are strictly bound with Clinical Legal Education Rules of the Bar Council of India, 2008. The students are taken to courts in an organized manner with Proper dress Code with the motto of enhancing their level of confidence for discharging their duties in the law field. As a part of clinical legal education, students of Government Law Colleges are taken to Alternative Disputes Redressal Forum with an object of turning them to settle the dispute as much as possible out of court in a legal manner so that it helps to minimize the accommodation surplus case dockets in the court of law. The Government Law Colleges are tremendous in nature and it collects very less fees when compared to other institutions in the country.

A comparison of Astonishing fees structure of law programs offered in government law colleges in Tamil Nadu with other institutions in the country.

**TABLE 2****Classification of Fees Structure for Entire Duration of the Degree**

<b>Categories</b>	<b>GLCs, Tamil Nadu<sup>14</sup></b>	<b>GLC, Mumbai<sup>15</sup></b>	<b>TNDALU-SOEL<sup>16</sup></b>
1. 5-year law program	Rs.5,000/-	Rs.27,600/-	Rs.4,38,175/-
2. 3-year law program	Rs.3,150/-	Rs.17,560/-	Rs.2,61,405/-

Note: The fees mentioned above is not per year. The Amount is calculated is for total duration of the course which means with Rs. 3150 itself (excluding the exam fee, mark sheet etc, collected by TNDALU) a person completes his entire three-year LL.B. Program in GLC of Tamil Nadu.

Total cost of 5 years Integrated law degree program and 3 years law degree program is just Rs.5000/-and Rs.3150/- respectively in Government Law College of

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<sup>14</sup> Fees Structure of Chennai Dr.Ambedkar Government Law College, Pudupakkam, <https://glcpkm.ac.in/fees-details/>, (last visited at Nov 16,2023).

<sup>15</sup> Fees Structure of Government Law College,Mumbai, <https://www.glcmbai.com/CSRStatisticsIndex>(last visited at Nov 16,2023).

<sup>16</sup> Tamil Nadu Dr.Ambedkar Law University Fees Structure , Prospectus 2023-2024 ,Final.pdf (last visited at Nov16,2023).

Tamil Nadu Which is less than the fees collected by GLC, Mumbai claimed to be first established law institute in Asia. And also, lesser than the fees collected by the School of Excellency in Law, Tamil Nadu Dr. Ambedkar Law University, a state university where all the 15 Government Law Colleges are all affiliated. Apart from all these characteristics only Government law college students of Tamil Nadu after their graduation are enrolled and practice as an advocate (Bar Council of Tamil Nadu & Puducherry) gets a monthly stipend of Rs.3000/- until they attend the age of 30 from Government of Tamil Nadu.<sup>17</sup>

### **Bifurcation of Dr. Ambedkar Govt. Law College, Chennai**

Based on the recommendations of the Committee headed by Honourable Justice P. Shanmugam, Retired Judge, High Court of Madras, which have been constituted to inquire on the causes and circumstances that have led to the violent incidents that have taken place between two groups of students in the campus of Dr. Ambedkar Govt. Law College, Chennai, on 12.11.2008.<sup>18</sup> The Prestigious Dr.

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<sup>17</sup> G.O. (MS). No. 246. Dated: 30.06.2020, [https://www.scribd.com/document/491687681/Offline-Application-for-Monthly-Stipend-New-0#:~:text=The%20applicant%20should%20be%20a,2.5%20laks%20per%20annum.\(last%20visited%20at%20Nov.%2018,%202023\)](https://www.scribd.com/document/491687681/Offline-Application-for-Monthly-Stipend-New-0#:~:text=The%20applicant%20should%20be%20a,2.5%20laks%20per%20annum.(last%20visited%20at%20Nov.%2018,%202023))

<sup>18</sup> W.P.11860/2017, <https://images.assettype.com/barandbench/import/2018/05>



Ambedkar Govt. Law college located in the High Court campus was bifurcated and shifted to two different campuses, one of which is named Chennai Dr. Ambedkar Govt. Law College and located at, Pudupakkam, Tiruporur Taluk, Chengalpattu District and another one is named as Chennai Dr.Ambedkar Govt. law College and located at Pattarai Perambuthur .The campuses has been declared open on 02.07.2018<sup>19</sup> onwards based on the direction of the High court vide Writ Petition No. 11806 of 2017 and vide G.O.Ms No.188/2017 dated 28.06.2018.<sup>20</sup>

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/Madras-HC-Ambedkar-Law-College-April-2018.pdf(last Visited at Nov 20,2023).

<sup>19</sup> Chennai Dr.Ambedkar Government Law College, Pudhupakkam, <https://glcpkm.ac.in/history-and-infrastructure-of-the-campus/> (last visited on Nov. 20,2023).

<sup>20</sup> Chennai Dr.Ambedkar Government Law College, Pudhupakkam, <https://glcpkm.ac.in/history-and-infrastructure-of-the-campus/> (last visited on Nov. 20,2023).

**TABLE 3**

**Classification of Distance for the students to Travel to Judicial Offices before & after Bifurcation**

<b>Judicial Offices</b>	<b>Dr. Ambedkar Govt. Law College, Chennai (closed permanently)</b>	<b>Chennai Dr. Ambedkar Govt. Law College, Pudupakkam</b>	<b>Chennai Dr. Ambedkar Govt. Law College, Pattaraiperambuthur</b>
Madras High Court, Chennai	At the Instance	37 kilometers	59 kilometers
District Level Courts	At the instance	41 kilometers	10 kilometers
State/District Legal Services Authority	At the instance (TNSLSA)	41 kilometers	10 kilometers

Thus, from the above table we can easily understand how the bifurcation of the Dr. Ambedkar Govt. Law College, Chennai has a huge difference for the law student in accessing the court for the benefit of Clinical Legal Education. But nowadays after the COVID-19 pandemic situation the hybrid mode of

court proceedings are helping the student as well as the general public to understand the working scenario of the court. But whether the hybrid mode meets the criteria as it of traditional method of court hearings or not? We need to do more research to know whether it is successful or not.

## **V. LEGAL AID ACTIVITIES IN GOVERNMENT LAW COLLEGES OF TAMIL NADU**

Many legal aid activities have been initiated and functioning in Government Law College as per norms specified in Legal Education Rules, 2008 of Bar Council of India. The Directorate of Legal Studies, Tamil Nadu is taking efforts for imparting the best legal aid programs and few of them are as follows: -

1. Establishing Legal Aid Clinic in GLC's<sup>21</sup>
2. Organizing Regular Court Visits<sup>22</sup>
3. Organizing Legal Awareness Programs like rally or campaign
4. Giving more importance to ADR mechanism and training them

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<sup>21</sup> Principal District Judge A. Kayalvizhi interacting with students of Government Law College after inaugurating a Legal Services Clinic,  
<https://www.thehindu.com/news/cities/Madurai/legal-services-clinic-opened/article26327516.ece> (last visited on Nov 21, 2023).

<sup>22</sup> Student visiting Madras High Court,  
[https://glcpr.ac.in/?avia\\_forced\\_reroute=1](https://glcpr.ac.in/?avia_forced_reroute=1), (last visited at Nov 21, 2023).

5. Frequently organizing Jail visits
6. Conducting Special Lectures

Apart from the above said activities the GLC's are doing, all activities have been advised by the Chairman, District legal Services Authority for the betterment of the Society and to serve the motto access to justice for all.

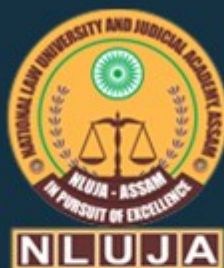
## **VI. CONCLUSION AND SUGGESTION**

Thus, we conclude that legal aid programs are offered in every law school in the country. But in this article, we have given justification for why the Government Law Colleges of Tamil Nadu is taken as the main Subject. And why importantly Dr. Ambedkar Govt. Law College, Chennai which was bifurcated five years back was taken as the special reference was also given with reasonable justification in this article. For the future benefits of Clinical Legal Education, we suggest the following recommendations as below.

- Bar Council must ensure that hereafter the colleges (To be Constructed) offering law programs should be functioning in and around at least 5 kilometres from at least Taluka Level Combined Court Complex for easy access to the students.
- The General Public still does not know of a legal aid clinic functioning in law School's. It is the duty of every law student in the country to keep aware that legal aid is not only available in

Advocate offices or legal services authority it is also available in Law schools for the Marginalised and every person who justifies their need of legal aid as per norms prescribed by legal Services Authority Act.

- There is no clear or specific objective on who benefited from bringing Compulsory legal aid clinics in Law Institutions by the Bar Council of India's Rule of Legal Education 2008 but through various functions of legal aid clinics it is clear that it benefits both General public and as well as law students.



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