



LEGAL AID AS A PILLAR OF SOCIAL JUSTICE

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Abstract - Legal aid plays a pivotal role in ensuring access to justice for marginalized and vulnerable populations, bridging the gap between legal rights and the ability to assert them. As a cornerstone of social justice, legal aid seeks to address systemic inequalities by providing affordable or free legal services to those who cannot afford them. This is particularly significant in addressing barriers related to poverty, discrimination, and lack of legal literacy. Legal aid systems promote fairness by supporting individuals in navigating complex legal processes, advocating for their rights, and challenging injustices in various domains, such as housing, employment, and criminal law.

The relationship between legal aid and social justice is multifaceted, as it not only involves access to representation but also highlights the broader societal need for equitable legal systems. Legal aid ensures that people can confront legal obstacles that would otherwise impede their ability to enjoy fundamental human rights and dignity. This contribution to social justice is vital in challenging institutionalized inequities, as it empowers individuals, promotes social inclusion, and strengthens the fabric of democratic governance. Despite its importance, legal aid programs often face underfunding, administrative challenges, and political obstacles, making it crucial for governments and civil society to commit to sustaining and expanding these services. This abstract underscores the importance of legal aid as an indispensable tool for achieving a fairer, more just society.

1. Introduction

In order to maintain the rule of law in a democratic society, everyone, especially the poor, marginalised, and disadvantaged, must have access to justice. The state shall guarantee that all people are treated equally before the law and have access to a judicial system that maintains justice based on fairness, according to Article 14 of the Indian Constitution. In 1976, the Indian Parliament incorporated Article 39A of the Constitution, which established free legal assistance as a basic principle.

Democracy and the rule of law can only endure when people have efficient and quick access to justice because nothing aggravates the human heart more than a terrifying sense of injustice. Since legal aid is an essential component of justice, its significance as a foundational element is now more widely recognized. In essence, legal aid is a mechanism that makes it easier for persons who are impoverished or otherwise disadvantaged to pay for any kind of help when they go to court to seek justice and a fair trial. Any legal system must have legal help; without it, the objectives of the system will be futile. Social justice emphasizes ties between groups within society rather than individual justice by creating an appropriate framework of just relationships and fair trials. When these two concepts are combined, the result is that everyone, regardless of socioeconomic background, should have equal access to the legal system.¹

2. History of Free Legal Aid in India

- According to the Law Commission of India's 1958 report on "Reform of Judicial Administration," giving poor

¹ Shipra Agrawal, "Social Justice and Legal Aid", *ProBono India* available at: <http://probono-india.in/blog-detail.php?id=58> last visited on Nov 28, 2022.

litigants legal aid is a serious problem rather than a trivial procedural one.

- For legal aid programs, the government drew some borders in 1960.
- Article 39-A was incorporated in the 1976 Constitution (Forty-second Amendment) Act, 1976.
- A Committee for Implementing Legal Aid Schemes was established in 1980 to monitor and oversee legal aid initiatives, with Hon. Justice P.N. Bhagwati serving as its head.
- In order to give legal aid programs nationwide a formal framework and standardized organization, the Legal Services Authorities Act was created in 1987.

The National Legal Services Authority was created as a statutory entity on December 5, 1995, with the dual goals of creating the most effective and economical legal service programs and creating policies and procedures for providing legal help in compliance with statutory provisions.

2. Social Justice And Lawyer

Even though a lawyer's practice, his backing strategies, his ability to argue, and his treatment of the law and current events cast distinct shadows on the circumstances in society, lawyers make the primary commitment to the end result of the equity framework, which is the court decisions and judgments that ultimately shape our society's future. A lawyer is presumably making his own fortune while practicing law and a promoter is making his own money while providing support. A lawyer's work is essential to one of the state's most important branches, such as the court. Law is a respectable career that isn't only used to keep the pot boiling. People in the legal profession can address their issues and discover answers to a variety of questions that aren't provided by other organizations in society.²

Every practicing advocate usually keeps in mind that there are people who genuinely require legal guidance or representation but are unable to pay for the appropriate assistance due to financial limitations. This element is generally important for the country's legal system because without remedies, problems cannot be remedied if people are just granted their rights. However, the majority-poor region of India will not be able to utilize these remedies if legal help is not provided.³

4. Legislation and Legal Aid

Legal aid is a topic of conversation in every developed and developing nation. Because there are those in every society who cannot afford to use the legal services which are offered to them by any type of government to safeguard their rights. Similarly, India's primary law of land, the Constitution of India, includes provisions for legal aid. Indian Constitution was always connected to social justice. The wording of the Preamble and the Directive Principles of State Policy of the Constitution leans socialist. The Constitution's reservation provisions for Scheduled Castes and Scheduled Tribes serves as the best example of this. The framers of the Constitution were of the opinion that merely granting these groups the right to equality would not be sufficient to end the ages-old injustices they had experienced or to give their right to vote any meaningful significance. To advance their interests, special constitutional measures were required. Similar to this, under Indian law, social justice is safeguarded by providing legal help to those who cannot afford legal services.⁴ In order to ensure justice, the Indian Constitution grants the right to free legal aid. The First Law Commission of India first considered the necessity for lawyers to represent clients in court, during jail appeals, and during criminal processes, and the 1961 Advocates Act urged the Bar Council to "provide legal help to the destitute." In India, there was a rise in interest in the 1970s and 1980s in addressing and expanding public awareness of the need for legal aid for the specific population.⁵

Article 14 of the Constitution obliges the State to guarantee all its citizens equality before the law and a legal framework that ensures justice on the basis of equal opportunity for all. In this regard, Articles 38 and 39 of the Indian Constitution provide a crystal-clear mandate. It has been established that inability to give free legal aid to an accused at the expense for the State unless the accused declines, would invalidate the trial that giving free legal aid isn't government's act of charity yet a state's obligation that ought not be underestimated.⁶ According to Article 38 of the Indian Constitution, the State shall endeavour to promote the welfare of the

² Ishika Sharma, "Legal Aid, Poverty and Social Justice", *ProBono India*, available at: <https://probono-india.in/blog-detail.php?id=132> last visited on April 04, 2024.

³ Ibid.

⁴ Ibid.

⁵ supra note 2

⁶ supra note 2.

people by securing and protecting a social order in which social, economic, and political justice shall inform all institutions. According to Article 39A, "the State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid" to the poor and needy, this is a particular provision. Nehruvian socialism and other forms of socialism were present throughout India's political history.⁷

Under Article 22(1) it is expressed that No individual who is arrested will be denied the option to counsel, and to be safeguarded by, a legal counsel.⁸ India's judiciary and bar leaders have long acknowledged the importance of providing all members in society with efficient legal representation.

According to Section 304 of the Criminal Procedure Code, if a party is not being represented by a pleader and cannot afford one due to their financial situation, the court should assign one at the expense of the state.⁹ In a similar vein, provisions pertaining to free legal aid are also found in other Acts, such as the Code of Civil Procedure.

According to the Civil Procedure Code of India, Order 33: Suits by Indigent Person, when a request to file a lawsuit on behalf of an indigent person is approved, the plaintiff is not required to pay court costs. If the circumstances of the case demand it, the court may assign a pleader to him if he is not represented by one; this right extends to the dependant as well.¹⁰

The Legal Services Authorities Act, 1987, a step toward legal aid, aims to empower individuals' cooperation to participate in judicial administration through Lok Adalats, which is kind of like a growth of public interest representation in rural areas supporting social justice in India. It ensures that no citizen is denied access to justice due to financial or other barriers and to ensure that the functioning of the legal system advances social justice. This act also aims to provide free and competent legal services to the poor, disadvantaged, and socially disabled. Under this Act, in every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organise Lok Adalats.

5. Obstacles To Legal Assistance

In India today, the legal aid movement is fragmented, unorganized, and sporadic. The coordination is lacking. The idea that everyone should have equal access to the judicial system has all but fallen apart. There remains a gap that needs to be filled in spite of the numerous statutory provisions, committees, and bodies that are in place. Nevertheless, many people tolerate injustice because they cannot afford to have an advocate represent them. The goals that have been set and the accomplishments that have been made differ greatly. "We no longer do pro bono work because we are too busy trying to survive," one law firm said in a recent survey.

There are several reasons why attorneys choose not to take on pro bono work. Resources for money are limited. Social education was not a part of earlier legal education. Consequently, they fail to understand or accept their job, and professionals rarely engage with members of the community who need legal assistance. There are so many cases that are currently ongoing in court, including the fact that many innocent persons were convicted but are unable to defend themselves. India's legal assistance program has not worked. A number of issues and challenges make it difficult to provide legal aid services.

Legal assistance is also significantly hampered by illiteracy. More than 70% of people in rural areas are illiterate, and many more are not aware of their legal rights, as is now well acknowledged. Exploitation and denial of the rights and benefits of the poor are caused by a lack of legal knowledge.

On the other hand, if the law is viewed as an "enemy" and a poor person is unable to redress his or her grievances through the tools of the law, he or she may turn against the legally constituted authorities, encouraging destructive impulses. Poor people who are erroneously convicted due to insufficient legal representation not only receive an unfair punishment, but they are also more prone to become social outcasts. Poor people won't have much faith in the rights that democracy gives them if they can't fight an unfair eviction.

⁷ Kaleeswaram Raj, "New legal aid system needed to ensure justice for the poor", *Frontline*, Nov. 13, 2022 also available at <https://frontline.thehindu.com/the-nation/urgent-requirement-new-legal-aid-system-to-ensure-justice-for-the-poor/article65791609.ece#:~:text=Article%2039A%20particularly%20says%20that,and%20other%20brands%20of%20socialism> last visited on April 04, 2024

⁸ The Constitution of India, 1950

⁹ The Code of Criminal Procedure, 1973.

¹⁰ The Code of Civil Procedure, 1908.

The "rule of law" is not likely to make sense to a poor individual who has been scammed and has nowhere to turn since he cannot afford legal representation.

6. Solutions and Suggestions

When all those in need and those with low incomes are aware of it and taking advantage of it as it is their fundamental right, the aim of legal aid will have been accomplished. Therefore, some changes are required in order to close those gaps in the legal aid system.

- Engaging non-governmental organisations more actively in the process of raising public knowledge of citizens' rights and proper administration of justice. It requires to embark on a campaign to inform and educate the public of its right to free legal aid. The focus should be more on Legal Aid because it is essential in this present scenario where gulf between haves and have-nots is increasing day by day. And elimination of social and structural discrimination against the poor will be achieved when free Legal Aid is used as an important tool in bringing about justice.
- For the purpose of educating the public about social justice and free legal aid programmes for the poor, there should be a widespread organisation of legal aid clinics and Lok Adalats. To educate people of various impoverished areas about their rights and the law and to persuade them to choose free legal aid by using Lok Adalats, ADR, and other alternative dispute resolution mechanisms, entitlement centres should be established there.
- Other developed nations have missions with two-year or five-year time frames to educate the masses about the law and their rights. India could potentially roll out a five-year programme to educate people of their legal rights as National Legal Services Authority (NALSA) has formulated National Plan of Action on spreading Legal Literacy across the country and launched the National Legal Literacy Mission for a period of 5(five) years i.e. 2005 to 09.
- More lawyers must be encouraged to deliver free legal aid. Legal fraternity members, as well as everyone else who is aware of their rights and the protections afforded by the law, are equally responsible for raising public awareness of legal aid. The Constitution's promise to provide legal aid can only be cherished and fulfilled when society steps up to assist, care for, and nourish its vulnerable population in accordance with their legal rights. This can be achieved by establishing a link between the local court and the legal clinics of law schools. So that those in need of assistance can first approach these non-judicial officers to learn about their rights as outlined in the Constitution of India.
- Due to their disinterest in providing free legal services and expectation of payment in the form of a set price, it is difficult to obtain a qualified lawyer representation nowadays. A party must have access to attorneys who will consider it worthwhile to dedicate their entire time and attention to a legal aid matter if legal aid is to be a meaningful right. Thus, the government or courts should pay lawyers proper standard fee, even if they represent or speak on behalf of the accused for free.
- The supervision of the performance of the counsels should be analyzed using the feedback method, which means asking the public for comment on the work of the counsel prior to actually producing accurate progress reports for each advocate. A suitable monitoring committee might be constituted to do all of this.³⁰
- It is imperative that per capita spending along with the budget allocated to NALSA be increased. Additionally, provision could be made for companies to spend their corporate social responsibility (CSR) funds for legal aid and towards increasing the compensation for panel lawyers to enhance the quality of service.¹¹

7. Conclusion

Equal justice for all should be the primary goal of the state, and legal assistance is a right of people as well as a duty of the government that goes beyond simple altruism because legal aid is a right of the people and a duty of the state, not a gift or a charitable act. Distributive justice, efficient welfare benefit implementation, and the abolition of structural and social discrimination against the poor are the main goals of legal aid. It operates in compliance with the Legal Services Authorities Act of 1987, which serves as the norm for the provision of free justice. "Equal justice for all" should be the main goal of the state. Legal aid works to ensure that the constitutional promise is upheld in letter and spirit and that the oppressed and weaker

¹¹ Amar Patnaik, "NALSA was supposed to be India's beacon for legal aid. But it's stuck in a systemic rut", *The Print*, Jan. 20, 2022, available at <https://theprint.in/opinion/nalsa-was-supposed-to-be-indias-beacon-for-legal-aid-but-its-stuck-in-a-systemic-rut/807587/> (last visited on July 02, 2025).

segments of society have access to equal justice. Free legal aid has been considered an essential component of the rule of law, however the legal aid movement has not succeeded in its mission. The goals established and achieved are far apart. Legal ignorance is the main barrier to the movement for legal help in India. The goal of the legal aid movement has not yet been accomplished because people are still unaware of their fundamental rights. Lack of legal knowledge is what causes the poor to be exploited and deprived of their rights and advantages.¹² Failure to provide legal aid will often lead to abuse of the poor's rights and benefits, so it is important to raise public awareness of the issue and ensure that legal aid is actually provided in order to fulfil the constitution's promise to provide equal and fair justice to all segments of society, especially the indigent segment, in order to ensure social justice.



¹² Sripriya. T, "Legal Aid and Awareness in India: Issues and Challenges", *Legal Service India* available at <https://www.legalserviceindia.com/legal/article-82-legal-aid-and-awareness-in-india-issues-and-challenges.html> last visited on July 02, 2025.