



Right To Free Legal Aid in India: A Constitutional Perspective

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Abstract:

The right to free legal aid is fundamental right to ensuring equal access to justice for all individuals, especially the marginalized and economically disadvantaged. In India, the right to free legal aid is protected under constitutional provisions and supported by the Legal Services Authorities Act, 1987. This research paper explores the evolution of free legal aid in India, examining key constitutional provisions, landmark case references, and the role of legal services authorities. It also identifies current challenges, highlights significant objectives, and suggests recommendations for improving the delivery of legal aid services in India.

Keywords: Legal Aid, Access to Justice for All, Constitutional Provision, Legal Services Authorities Act, 1987

1. Introduction

Free legal aid aims to provide justice for all by ensuring that no individual is deprived of legal representation due to financial constraints. Legal aid is essential in upholding the principle of equality before the law, as recognized under the Indian Constitution. This research paper examines how India's legal framework, influenced by both constitutional and statutory provisions, reinforces the right to free legal aid. It also looks at judicial interpretations that have broadened the scope of free legal aid, the challenges faced in implementing it effectively, and the impact of the Legal Services Authorities Act.

2. Objectives of the Study

The primary objectives of this study are:

1. To examine the constitutional provisions related to free legal aid in India.
2. To assess the implementation and effectiveness of free legal aid services provided by various state authorities.
3. To review significant case laws that have expanded the understanding and application of the right to free legal aid.

3. Meaning of Legal Aid:

According to Cambridge Advanced Learners' Dictionary "Legal Aid" means a system of providing free advice about the law and practical help with legal matters for people who are too poor to pay for it.⁵ In the traditional sense legal aid is understood as financial assistance to a person who wishes to assert or defend his rights in a court of law and who would not be able to do so without such assistance in view of his financial means.⁶ The general meaning of the term "Legal Aid", therefore is a legal support, social security, and social arrangement, for extending and providing special assistance or help to the poorer and weaker members to enable them to enforce their legal rights through legal process

4. Origin and Development of Legal Aid in India:

In India, the concept of legal aid developed relatively late compared to other legal institutions that have historically been more accessible to the public, largely due to the nation's rich socio-cultural heritage. The need for legal aid was first recognized during British colonial rule. The origins of legal aid in India can be traced back to *forma pauperis* suits under the Code of Civil Procedure, 1908. The modern framework of legal aid in India began to gain prominence following the publication of the Rushcliffe Committee Report in England in 1945. The concept was influenced by the Legal Aid and Advice Act, 1949, which emerged from the recommendations of the Rushcliffe Committee. In this context, the Bombay Legal Aid Society played a pivotal role by drawing the attention of the Indian government to the Rushcliffe Committee's findings in 1945 and advocating for the establishment of a similar committee in India. Post-independence, the Government of India referred the matter to the Law Commission of India, seeking recommendations for the creation of a robust and effective legal aid system aimed at delivering social justice.

4.1 Vedic period¹:

The Vedas are regarded as the ultimate source of knowledge in Indian tradition and are believed to be divine revelations from God himself. However, there is no consensus regarding the chronological timeline of this period, during which Indian society was predominantly simple and rural. The concept of *Dharma* served as a guiding principle for social order and governance, incorporating religious, ethical, and social dimensions. Individuals were deeply intertwined with the

¹ Singh, G. (1992). *Translation of Important Parts of Rig-Veda*, New Delhi: Sadhna Pocket Books, pp. 32-36.

principles of *Dharma*, fostering a sense of tolerance and responsibility toward others, even though the modern understanding of legal aid was absent. Nevertheless, the essence of *Dharma* implied that those in need should be supported and helped.

The Rig Veda, the oldest of the four Vedas, includes references to elements of legal or social aid. For instance, the 36th and 42nd Shlokas in Chapter I highlight the necessity of protecting individuals from *rakshas* (demons) and violent forces, advocating for the provision of strength and protection while invoking blessings for those who contribute to such efforts. This reflects the continuity of violence as a challenge in ancient orderly societies and its persistence in future societies. The Rig Veda also emphasizes the importance of gathering resources, including monetary contributions (*Daan*), to aid and protect those who face threats or attacks.

4.2 Pre Independence-Period: (British Era)

Indian history reveals that the East India Company introduced the concept of common law to govern the Indian people and manage the justice system. Initially, they did not disrupt the existing systems, such as the authority of the Kazi or the functioning of the Panchas. However, over time, British rule gradually established a formal justice system in India, particularly following the creation of adjudicatory courts. This process became increasingly formalized with the adoption of the Anglo-Saxon system of jurisprudence in judicial proceedings. After the British Crown assumed direct control, a fully developed adjudicatory framework was established in India.

4.3 Post- Independence Period

In response to discussions between the Government of India and the Provincial Governments regarding legal aid, resolutions were introduced in the Bombay Legislative Council and Assembly. Consequently, in March 1949, the Government of Bombay established the Bombay Legal Aid Committee, chaired by Justice Bhagwati (then a Judge of the Bombay High Court), commonly referred to as the Bhagwati Committee. The committee was tasked with examining the provision of legal aid in civil and criminal cases for the economically disadvantaged, individuals with limited resources, and members of backward classes. Its objective was to recommend measures to make justice more accessible to these groups.

4.4 To facilitate the provision of legal aid, the committee submitted its report on October 31, 1949, with the following key recommendations:

4.5 Structure of Legal Aid Committees:

The legal aid system should be managed by committees established at different administrative levels across the states, organized in a hierarchical structure:

- Taluk Legal Aid Committees.
- District Legal Aid Committees.
- Legal Aid Committees for both the appellate and original jurisdiction of the High Court.
- State Legal Aid Committees.

4.6 Coverage of Costs:

The state should bear all expenses incurred by litigants in trial and appellate courts, including court fees, process fees, out-of-pocket expenses, witness allowances, costs for obtaining certified copies, advocate fees, and expenses for preparing appeal papers and necessary books. This should apply to both civil and criminal cases.

4.7 Eligibility for Backward Classes and Scheduled Tribes:

Individuals from Scheduled Tribes and other backward classes should be eligible for state-funded legal aid. A certificate issued by the local Executive Officer or an officer responsible for backward class affairs should suffice as proof to qualify for legal aid.

5. Constitutional Perspective.

5.1 Article 39A: Introduced by the 42nd Amendment Act, 1976, Article 39A directs the State to promote justice on the basis of equal opportunity and provide free legal aid.

5.2 Fundamental Rights and Legal Aid:

5.2.1 Article 14: Ensures equality before the law and equal protection of laws.

5.2.2 Article 21: The right to life and personal liberty has been expansively interpreted to include the right to legal representation.

5.2.3 Directive Principles of State Policy (DPSPs): Provisions under Articles 38 and 41 emphasize the State's role in promoting justice and aiding citizens in cases of inability.

5.2.4 Latest Amendments and Developments: The introduction of technology-driven legal aid initiatives, such as the NALSA Legal Aid app, ensures accessibility to free legal services. Amendments in the Legal Services Authorities Act have further streamlined funding and functioning of legal aid programs.

5.2.5 Comprehensive Overview of Constitutional Provisions and Legal Aid Impact

Constitutional Provision	Description	Impact on Legal Aid
Article 39A	Mandates free legal aid for equal justice	Foundation for the Legal Services Authorities Act, 1987, ensures equal justice
Article 21	Right to life includes right to legal representation	Expands scope to include pre-trial and trial stages
Article 14	Equality before law	Guarantees non-discrimination in access to legal aid
Articles 38, 41	DPSPs promoting justice and aiding citizens	Guides State's role in creating legal aid policies
Latest Amendments	Technology-driven legal aid and funding enhancements	Improves access, efficiency, and resource allocation

6. The Expert Committee Report, 1973 (Justice Krishna Iyer Report)

In 1973, the Government of India appointed an Expert Committee under the chairmanship of Justice Krishna Iyer to explore ways to provide legal aid to weaker sections of society, including socially and educationally backward groups. The committee highlighted the need for legal advice to raise awareness of constitutional rights and prevent unnecessary litigation, as well as legal aid in civil, criminal, and revenue court proceedings. It emphasized establishing legal aid centers, engaging lawyers to assist rural communities, and preventing disputes through legal guidance. The report also recommended amending procedural laws like Orders XXXIII and XLIV of the CPC to allow courts to appoint state-funded pleaders for indigent litigants.

The Expert Committee Report, titled *Processual Justice to the People* (1973), proposed significant reforms in the justice system, identifying groups such as the poor, industrial workers, women, children, minorities, and prisoners as priority legal aid beneficiaries. It suggested providing state-funded legal counsel in criminal cases, improving enforcement mechanisms, and focusing on rehabilitation through counseling, vocational training, and correctional measures. The report also emphasized establishing an autonomous network of institutions at national and state levels to deliver effective legal aid.

6.1 Expert Committee Report, 1977 (Justice P.N. Bhagwati Report)

In 1977, the Government of India formed a committee chaired by Justice P.N. Bhagwati, with Justice V.R. Krishna Iyer as a member and N.L. Vaidyanathan as Secretary, to address constitutional provisions for legal aid. The committee's interim report, titled *National Juridicare: Equal Justice-Social Justice*, outlined a National Legal Services Bill and proposed an infrastructure for legal aid programs across the country. It emphasized Nyaya Panchayats, Lok-Nyayalayas, conciliation, and non-litigation methods to support weaker sections of society. Key recommendations included establishing Lok-Nyayalayas, now known as Lok Adalat's, for dispute resolution through conciliation and mediation. The report advocated for a legal aid system addressing the socio-economic challenges of marginalized communities, such as Scheduled Castes and Tribes. It stressed the role of voluntary organizations in delivering legal aid and influenced later reforms, including the inclusion of para-legal services in the Advocates Act, 1961, and the establishment of legal aid clinics. The report also proposed a comprehensive structure for legal services, including the National Legal Services Authority, state councils, and regional boards, shaping the Legal Services Authorities Act. The committee emphasized social action litigation and urged courts to act proactively in promoting legal aid. Recognizing legal aid as a tool for eradicating poverty and inequality, the government formed the Committee for Implementing Legal Aid Schemes (CILAS) to oversee and monitor state-level programs, laying the groundwork for preventive and remedial legal aid initiatives.

6.2 The Forty Second Amendment of the Constitution of India on Legal Aid.

Following independence, procedural laws such as the Code of Criminal Procedure and the Code of Civil Procedure were introduced, and various committees were established to address legal aid. However, no substantial efforts were made by the government to enact new legal provisions for legal aid during this period. A significant shift occurred with the 42nd Amendment to the Constitution, which introduced Article 39-A and added "Administration of Justice" (Entry 11-A) to the Concurrent List. Article 39-A mandated the state to provide free legal aid to ensure equal access to justice, thereby advancing the goal of socio-economic justice outlined in the Preamble of the Constitution.

Post-amendment, both the Union and State Governments actively implemented legal aid programs. Several states, including Karnataka, Tamil Nadu, Madhya Pradesh, Maharashtra, and others, established Legal Aid and Advice Boards between 1976 and 1977. Additionally, the Government of India formed the Justice Bhagwati Committee on May 19, 1976, to enhance legal aid within the justice system. The committee's report, submitted on August 31, 1977, provided substantial momentum to the legal aid movement, fostering long-term progress.

6.3 The Enactment of the Legal Services Authorities Act, 1987,

marked a pivotal moment in India's legal aid movement, incorporating recommendations and efforts from various committees, including the Juridicare Committee and CILAS. This legislation provided the long-awaited statutory framework for delivering free and competent legal services to marginalized and economically disadvantaged groups. It aimed to ensure that justice is not denied to any citizen due to financial or other barriers and mandated the establishment of Legal Services Authorities at the national, state, and district levels. Lok Adalat's were also introduced as a means to

facilitate accessible, affordable, and expedited justice. The Act obligates these authorities to extend legal aid to groups such as Scheduled Castes and Tribes, victims of trafficking or disasters, women, children, and industrial workers, as well as individuals earning below a specified income threshold. However, beneficiaries must meet the prima facie case test to qualify for aid. The legislation also created a legal aid fund at each authority level, sourced from government grants, private donations, and court orders.

7. Case References

7.1 ²Hussainara Khatoon v. State of Bihar (1979):

Where the court was appalled at the plight of thousands of under trials languishing in the jails in Bihar for years on end without ever being represented by a lawyer. The court declared that “there can be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.” The court pointed out that Article 39-A emphasized that free legal service was an inalienable element of ‘reasonable, fair and just’ procedure and that the right to free legal services was implicit in the guarantee of Article 21.

7.2 ³In Khatri & Ors v. State of Bihar & Others it held that:

“The State is Constitutionally bound to provide such aid not only at the stage of trial but also when they are first produced before the magistrate or remanded from time to time and that such a right cannot be denied on the ground of financial constraints or administrative inability or that the accused did not ask for it.

7.3 ⁴M.H. Haskot v. State of Maharashtra (1978):

The Court ruled that free legal aid is a constitutional right under Article 21, especially for individuals who cannot afford representation.

7.4 ⁵Suk Das v. Union Territory of Arunachal Pradesh (1986):

The Court emphasized that failure to provide free legal aid to indigent persons infringes upon their constitutional rights.

7.5 ⁶Delhi Domestic Working Women’s Forum v. Union of India (1995):

The Supreme Court directed the government to provide free legal aid and compensation to victims of sexual assault, reinforcing legal aid as a right for vulnerable groups.

8. Suggestions and Conclusion

8.1 Suggestions:

To strengthen the right to free legal aid in India, several measures can be adopted to ensure its effective implementation. Awareness campaigns should be intensified, particularly in rural and marginalized communities, to educate citizens about their entitlements and the avenues available for accessing legal aid. Enhancing the infrastructure of legal aid clinics, Lok Adalat’s, and paralegal volunteer networks is crucial, with a focus on expanding their reach to underserved areas and equipping them with adequate resources and training. Leveraging technology can further streamline the process by enabling online applications, case tracking, and virtual consultations, while also exploring online dispute resolution mechanisms to expedite justice delivery. Collaboration between legal aid institutions, non-governmental organizations, and educational institutions can foster innovative approaches and provide additional support for the system. These measures can collectively ensure that free legal aid fulfills its constitutional mandate of providing equitable access to justice for all.

8.2 Conclusion:

Free legal aid is indispensable to achieving access to justice for all in India. Through the constitutional mandate, particularly Articles 21, 39A, and 22, the right to free legal aid has been recognized as a fundamental right. However, several practical challenges, such as lack of awareness, inadequate funding, and infrastructure, hinder its full implementation. Addressing these barriers can enable the Indian legal system to uphold justice for all, in line with the constitutional vision.

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