



Attaining Access to Justice Through Legal Aid Mechanism: Leaving No One Behind in Modern Era

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ABSTRACT

India is a republic, democratic, secular, socialist and sovereign nation, having organic, dynamic and living Constitution which significantly assures to all its citizens political, economic and social justice, and equality with respect to opportunity, liberty and status. The Constitution, along with international covenants and Magna Carta, declares in its preamble the principle of equality, justice and liberty. However, it is pertinent to note that a large segment of the nation owing to socio-economic disabilities, illiteracy, poverty, cultural inhibition, cannot exercise their entitlements or safeguard their legal interest by approaching the judicial machinery. They also face every kind of discrimination, oppositions and non-cooperations from all fronts. The access to the judiciary and factually equal right to invoke the rights of such marginalized, poor and helpless communities are, thereby, seriously contravened, leading to absolute denial of justice. To overcome this challenge, the justice system has stepped in to render assistance legally to those disadvantaged people who are restricted and deprived of legal services. For ensuring the principle of justice, it is not merely adequate that law considers both poor and rich equally, but is further essential that weaker class shall be positioned to avail equal protection and opportunity of the laws empowering them to easy access to the justice system. Lord Heward correctly stated that “Justice should not merely be done but should undoubtedly and manifestly be seen to be done”. Thus, legal assistance is the most ardent socio-economic weapon to dispense and achieve equal justice for everyone and in the absence of the same, the essential principle of rule of law cannot be sustained, ensured and maintained in India. Indian legal system seeks to foster justice through legal aid but still some gaps are existing which requires appropriate solution. Even the concerned High Courts and Apex Court of India has attempted to construe the fundamental rights along with DPSP to provide “access to justice” feasible and easier for vulnerable and marginalized people. But the actual statistics reveal that “access to justice” has become difficult to access. The paucity of legal awareness, complexity in procedure, high court fees and legal charges and pending matters before the Court has paralyzed the nation’s legislative structure. In this research article, the author highlights the concept of “legal aid and access to justice.” The paper further examines the significance of free legal services in attaining the “access to justice principle” in India. The author explores the legal framework related to legal assistance and availing justice in India. The research article also focuses on international standing with respect to promotion of legal aid and justice among disadvantaged groups. It also analyses the judicial trend concerning legal aid as a means to attain justice to all, especially the poor and disadvantaged ones. Moreover, the author discusses several challenges surrounding legal aid and providing the means to avail justice to the parties. Lastly, the article will provide necessary recommendations for dealing the problems related to implementation of legal aid schemes or initiatives.

Keywords: Justice, Legal Aid, India, Legal service, access to justice.

INTRODUCTION

Legal aid is a foundational component of providing justice to everyone, particularly in a nation where population is diverse. Legal service encompasses offering legal assistance free of cost to the indigent or incapable person who lacks adequate resources to hire lawyer. It plays a crucial part in assuring that every person has access to justice immaterial of his or her background. It is essential to assure everyone with social and economic justice and this can be achieved through legal assistance. Legal aid bridges the gap among weaker class of society and the legal system existing in such society. It causes strengthening the legal system and fosters harmony and social stability. Legal aid forms to be an integral element and is envisaged under Article 39A¹, which highlight the significance of equal access to justice. The Institutions like NLSA, SLSAs and DLSAs assists in implementation of scheme related to free legal aid. Legal aid is the result of inculcation of the welfare state and socio-economic philosophy, which requires proper research and appropriate solutions.

DEFINITION OF LEGAL AID

The term “Legal Aid” is a broad concept and involves “provision of free legal assistance to those persons who are not able to avail the legal system or is unable to hire legal representative. The main goal of legal aid is to assure that justice is

¹ The Constitution of India 1949, art. 39A.

accessible to everyone, immaterial of the economic and social condition”². The scope of legal assistance includes various kinds of legal services such as legal awareness, free legal assistance from counsel, assistance to poor by legal aid clinics, assuring legal services to the victims of accident or disaster, etc.

IDEA OF “ACCESS TO JUSTICE”

Law is tools and justice is the ultimate aim and to achieve the objective law shall have formal legal mechanism accessible to everyone. The expression “access to justice” cannot be adequately understood without definition of the word “justice”. The idea of justice evolved from the concept of equality and includes “quality of being impartial, fair and morally correct, wherein every person is treated equitably”. The idea of “Access to Justice” encompasses two major elements. Firstly, an efficient and strong legal system with entitlement supported and enlisted by substantive law. Secondly, accessible and useful remedial/judicial setup which can be easily availed by litigant public. As per the Black’s law dictionary “it is an ability of Society to utilize judiciary and other legal institution efficiently to safeguard the rights and claims”³.

HISTORICAL BACKGROUND OF LEGAL AID

Historical evolution of legal aid can be derived from the phase when criminal court system was transferred from Mughals to the East India Company. Later, in 1898, the “Code of Criminal Procedure” was formulated which provided for funding by State with respect to legal representation to the accused but it was discretionary and conditional⁴. In 1924, Bombay Legal Aid Society was constituted for rendering legal assistance to poor with access to justice. During pre-independence era, due to lack of scope of legal service, the implementation was not up to the mark. In Post independence phase, developed cities such as Bombay and Calcutta attempted to assist the economically weaker people with legal aid. In the year 1957, the Kerala Legal Aid Rules was framed which aimed to help the disadvantaged people with free legal aid⁵. Thereafter, Bhagwati Committee was formed by Gujarat government which identified the inadequacy of legal system and suggested for shifting to ADR and foster preventive legal aid. Likewise, in 1976, Judicare Committee was setup and 42nd Amendment to the Constitution inserted Article 39A which guarantee free legal aid. Finally in 1987, the “Legal Service Authorities Act” was introduced to improve the state’s commitment in providing legal aid⁶.

SIGNIFICANCE OF “ACCESS TO JUSTICE”

“Access to Justice” is a basic standard which forms the foundation of the democratic fabric of any nation. It is the most essential aspect of “rule of law”, assuring that every person, immaterial of their social and economic situations, have fair and equal opportunities to invoke legal redressals. It seeks to safeguard freedoms and rights of all. Without effective means to avail legal recourse, the vulnerable and marginalized communities might find themselves powerless. It is closely associated to the concept of efficient and fair legal system. It fosters economic and social development⁷.

INTERNATIONAL EFFORTS CONCERNING LEGAL AID

(i) “Universal Declaration of Human Rights (UDHR) 1948”

Article 11⁸ of the UDHR provides for legal aid by providing that the accused is entitled to be assumed innocent till established as guilty. During public trial, he shall be guaranteed with the requisite defence.

(ii) “International Covenant on Civil and Political Rights (ICCPR) 1966”

Article 14⁹ of the ICCPR provides that every person shall be provided with minimum guarantees during criminal matter namely, right to be informed, right to have sufficient facilities and time for preparing defence, and right to avail timely justice.

(iii) European Convention 1950

Article 6¹⁰ of the said Convention entitles every person with fair trial. It states that everyone shall have right to be presumed innocent, free assistance in legal matters, and right to defend any case.

² Akarshita Singh, “Legal Aid in India: current scenario and future challenges” (*Manupatra Articles*), available at <https://articles.manupatra.com/article-details/Legal-Aid-in-India-current-scenario-and-future-challenges> (last visited on 27 January 2025).

³ Mayukha Pacha & Anicham Tamilmani, “Access to Justice in India” 2(1) *International Journal of Law Management & Humanities* 1 (2018)

⁴ Ragini P. Khubalkar, “Contours of Legal Aid: Past, Present and Future” 11(2) *Asian Journal of Legal Education* 56 (2024).

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Dr. Justice B S Chauhan, “Access to Justice and Rule of Law” available at https://nja.gov.in/Concluded_Programmes/2018-19/P-1110_PPTs/4.Access%20to%20Justice.pdf

⁸ UDHR 1948, art. 11.

⁹ ICCPR 1966, art. 14.

¹⁰ European Convention 1950, art. 6.

(iv) African Charter 1981

Article 7¹¹ of the instrument acknowledges the “right to fair trial”, wherein access to legal assistance through legal representative is also covered. The aid is provided to the persons who are unable to avail the legal services.

(v) UN Convention against Corruption 2003

This convention provides for legal aid, particularly to the witnesses and victims of corruption crimes. Article 68 obliges the Members to assure of legal services in proper case, contributing to the lessening of corruption.

LEGISLATIVE FRAMEWORK RELATED TO LEGAL AID AND ACCESS TO JUSTICE**Constitutional Provisions**

The Constitution recognizes the significance of rendering justice to all citizens by inculcating provisions concerning legal aid. Article 39A¹², which was inserted by 42nd Constitutional amendment, is an important provision which expressly deals with the government’s duty to render free legal assistance. It laid the basis for formation of NLSA- “National Legal Services Authority” in the year 1987. NLSA has framed strategies and policies pertaining to legal aid initiative across the nation. Moreover, other provisions of Grund norm (Constitution) indirectly deal with the idea of legal aid. Article 21¹³ safeguards the “right to life and liberty of an individual”, has often being construed by the Courts to emphasize the necessity for legal aid. Article 14¹⁴ provides for equality to all, immaterial of economic or social condition. The Supreme Court while affirming the constitutional mandate has pronounced pathbreaking decision such as “*Hussainara Khatoon v. State of Bihar*”¹⁵, *M.H. Hoskot v. State of Maharashtra*¹⁶, and *Khatril II v. State of Bihar*¹⁷” thereby strengthening the idea of legal aid. Further, Article 39A¹⁸ cast obligation on the State to formulate such policies and enact legislations for making legal assistance available and accessible to everyone in the nation. This provision seeks to create a legal setup which fosters justice based on equal opportunity and makes sure that social or economic constraints doesn’t pose difficulty to access justice¹⁹.

Statutory Provisions**Legal Services Authorities (LSA) Act 1987**

Apart from Constitution, the LSA Act was framed in 1987 which aims to “establish legal services authorities for providing competent and free legal aid to the disadvantaged portion of society and for assuring that means to secure justice are not made devoid to any individual by virtue of social or economic disabilities. The enactment further aims to conduct Lok Adalats for securing that working of the legal system fosters justice based on equal opportunity.

According to Section 2(1)(c)²⁰ of the statute, legal aids explicated under the Act will include providing any assistance in conducting the legal proceeding before the Court or Tribunal or other authorities and further rendering the advice on any legal issue. Chapter II and III of the enactment provides for constituting legal service authorities at every levels i.e., sub-divisions districts, state (State legal service authority- SLSA), and national (NALSA). The Committees at appellate courts viz., Apex Court and concerned High Courts. Each institution is vested with several roles and obligations under the enactment to render access to effective legal assistance at every stages. They are vested with the work of supervising and evaluating the implementation of legal aid schemes at regular basis. Chapter IV of the enactment provides for “right to legal aid/services” in the nation. Section 12²¹ of the Act specifies about the eligibility criteria for claiming legal aid and includes several vulnerable classes of society class based on social and economic factors.

Regulations

For the purpose of ensuring efficient operation of legal service institutions there are mainly three regulations i.e., “NALSA (Lok Adalat) Regulations 2009, NALSA (free and Competent Legal Services” Regulation 2010 and NALSA (Legal Services Clinics) Regulation of 2011”. While 2009 and 2011 regulation aim to render regulation for the operation of Lok Adalat & legal services clinics, the 2010 Regulation contains provisions for monitoring & assessing the quality of legal assistance assured by the State²².

¹¹ African Charter, art. 7.

¹² The Constitution of India 1949, art. 39A.

¹³ The Constitution of India 1949, art. 21.

¹⁴ The Constitution of India 1949, art. 14.

¹⁵ AIR 1979 SC 1377.

¹⁶ AIR 1978 SC 1548.

¹⁷ AIR 1981 SC 1548.

¹⁸ The Constitution of India 1949, art. 39A.

¹⁹ Siddharth Rana, “Legal Aid in Indian Constitution” 6(2) *International Journal of Creative Research Thoughts* 327 (2018).

²⁰ The Legal Service Authorities Act 1987, s. 2(c).

²¹ The Legal Service Authorities Act 1987, s. 17.

²² Y. Srinivasa Rao, “Right to Free Legal Aid, Manupatra” available at- <https://manupatra.com/roundup/377/Articles/RIGHT%20TO%20FREE%20LEGAL%20AID.pdf>

Schemes & Programmes

After constituting legal service authorities, numerous initiatives have been formulated over the years, especially in 2015 and 2016. These schemes cover a wide ambit of beneficiaries and are in accordance with the vision of NALSA for encouraging an inclusive legislative structure, which ensures meaningful and fair justice to the disadvantaged and weaker sections.

- (i) **NLSA Scheme 2010 on Disaster Victims:** Through this initiative, disaster victims are provided with free legal assistance as provided under Section 2(e) of the LSA Act.
- (ii) **“NLSA Scheme 2015 on Victims of Commercial sexual exploitation and trafficking:”** This scheme provides legal aid to the victims of trafficking, which includes women, adolescent girls and children.
- (iii) **NLSA Scheme 2015 on services to Employees in Unorganised sector):** This initiative makes workers of unorganised sector aware regarding their entitlements under the law.
- (iv) **NLSA’s Compensation Scheme 2018:** The primary aim of this initiative is to streamline the process for granting compensation to victims of sexual assaults, women victims or other offense.
- (v) **Tele-law programme:** This programme was brought to render legal consultation and advice from panel advocates. It associates the weaker class to counsel via telephone or video conferencing.
- (vi) **Nyaya Mitra Programme:** This initiative was launched in 2017 which aims to help the district courts in diminishing the cases pendency and ensuring access to justice for the disadvantaged individuals.

JUDICIAL TREND VIS-À-VIS ACCESS TO JUSTICE AND LEGAL AID

Indian Judiciary has been a strong institution in safeguarding the rights of poor and vulnerable by invoking the principle of “access to justice via legal aid”. The following decisions depicts how the Courts have been instrumental in this aspect.

- **M.H. Hoskot v. State of Maharashtra**²³- The Apex Court remarkably upheld that “the global right of legal aid is a vital part of fundamental right which is necessary to assure just and fair legal process. The Court observed that when disadvantaged people like prisoner is unable to reach court, then he can take legal help by invoking assistance implicated under Article 14²⁴, along with Article 39A and 21²⁵ of the Indian Constitution.”
- **Hussainara Khatoon v. State of Bihar**²⁶- the Apex Court noted that “all accused person is entitled to Constitutional rights of availing legal assistance who are unable to hire advocate on account of factors like indigence or poverty. The government is constitutionally obliged to provide an Advocate to the accused. Where free legal aid is not rendered, the trial gets vitiated as it is in violation of Article 21 of the Indian Constitution”.
- **Sunil Batra v. Delhi Administration**²⁷- the Court gave significant rulings in favour of prisoners. The Court identified “the right to legal aid and speedy trial under the ambit of Article 21.” Court suggested for reshaping the Bail laws as the current judicial and bail system is against the norms of justice for the needy and poor. The Court clarified that State is bound to rehabilitate the victims of injustice.
- **A.R. Antulay v. R.S. Nayak**²⁸- the five-judges bench addressed the issue of “right to speedy trial” and gave certain guidelines which can be provided in following manner-
 - (i) Reasonable, just and fair procedure provided in Article 21 give rise to a right in accused to be tried in speedy manner.
 - (ii) If right to speedy trial is contended to be violated, the main issue is who will be liable for the delay.
 - (iii) While deciding whether unreasonable delay has caused, all the relevant circumstances should be taken into account.
 - (iv) The conviction must be quashed by the Court where right to speedy trial was contravened and in other case, the Court can pass appropriate order where quashing is not in furtherance of justice.
- **Maneka Gandhi v. Union of India**²⁹- In the instant matter, Justice P.N. Bhagwati made a key ruling in following manner- “Poor can be safeguarded against any form of injustice and statutory and constitutional rights can be given effect only through nation-wide legal services schemes for rendering free legal assistance to them”.
- **Sukh Das v. UT of Arunachal Pradesh**³⁰- The Court reiterated the “right to legal representation of an accused during the phase of custodial interrogation.” The decision stressed that legal assistance is necessary during trial as well as pre-trial stage.
- **“Md. Ajmal Mohamad Amir Kasab & Ors. v. State of Maharashtra**³¹”- The Court dealt an matter field against death penalty for the crime of terrorism. It was established that although failure to assist legally at the initial phase of trial will vitiate the trial but failing to provide the same during pre-trial phase might not have the same effect.

²³ AIR 1978 SC 1548.

²⁴ The Constitution of India 1949, art. 142.

²⁵ The Constitution of India 1949, art. 211.

²⁶ AIR 1979 SC 1369.

²⁷ AIR 1980 SC 1579.

²⁸ AIR 1992 SC 1701.

²⁹ AIR 1978 SC 597.

³⁰ (1986) 2 SCC 401.

³¹ (2012) 9 SCC 1.

- **Anokhilal v. State of Madhya Pradesh**³²- The Court passed an order to set aside the sentence and conviction and ordered to conduct the case de novo. The main ground was that amicus curie was not provided with adequate time to prepare the case which led to failure of justice.

ACCESS TO JUSTICE AND PIL

PIL is one of the latest modes of assuring “access to justice” in real sense. The Courts in India are attempting to remove hindrances between justice system and the marginalized people. Justice P.N. Bhagwati brought the emerging idea of “Public Interest Litigation (PIL)” which enabled the public-spirited person to defend the legal and constitutional entitlement of the weaker class of society. In **PUDR v. Union of India**³³, the judiciary widened the ambit of PIL by explicating that- “It will not be fair or appropriate to keep expectation from an individual acting pro bono publico to invest amount for reaching to an advocate and preparing a petition. In such a circumstance, even a letter addressed by him can legally be considered as a proper proceeding”³⁴.

The ambit of common principle of locus standi was broadened and the convention approach was discarded to enhance the possibility of “access to justice” for the poor and disabled people. Justice Krishna Iyer in the matter of **Municipal Corp. Ratlam v. Vardhichand**³⁵ stated that “Whenever centre of gravity is to be changed, as to preamble of Constitution, it should be from conventional individualism of locus standi to the community orientation of PIL”³⁶.

Another PIL was filed in the matter of **Sheela Barse v. State of Maharashtra**³⁷ wherein Court felt the need for providing legal aid to the prisoners. The Court reaffirmed that poor accused shall be rendered legal assistance and emphasized on the significance of safeguarding rights of prisoners against inhuman treatment and regain faith in the judicial system.

MODERN APPROACH OF ACCESS TO JUSTICE WITH REFERENCE TO ADR

As major section of the nation like India are backward, illiterate, poor or oppressed, the government introduced the idea of ADR to ensure justice based on equal opportunities. Arbitration, Lok Adalat, mediation, Ombudsman, and Legal service authorities are the element of ADR under Indian legal setup. These ADR mechanisms render inexpensive and speedy justice. Since ADR is an efficient way to secure justice, it should be used more frequently in India. The law schools in India are also responsible in providing information to the people regarding the role of legal aid, specifically with respect to ADR. This has resulted into increase in the instances of free legal aid clinics aiming to target the poverty related problems³⁸.

ISSUES CONCERNING LEGAL AID FOR ACCESSING JUSTICE

There are various issues and problems prevailing in rendering the legal aid services in India.

(i) Lack of awareness: One pertinent hindrance in getting legal assistance is that general public is unaware about availability and ambit of legal aid assistance. Several people are not knowing whether they are entitled to receive free legal aid. This lack of sensitization might disable persons from getting assistance even where they are subjected to legal difficulties³⁹.

(ii) Inadequate resources and fundings: Legal aid schemes are usually implemented on limited resources and budgets, which could potentially hamper their capacity to fulfil the demands for services. Insufficient funding might cause restricted outreach efforts, understaffing and scarcity of essential resources like legal technology and material. For addressing this issue, the State and funding agencies is required to prioritize the allocation of adequate resources to legal aid campaigns.

(iii) Ineffectiveness and unnecessary delay in delivering legal aid: The mechanism of availing legal assistance for obtaining justice can sometimes be ineffective and slow, leading to delays for person in need of such aid. Bureaucratic hindrances, complex eligibility conditions and administrative bottlenecks can contribute to those delays. Enhancing the effectiveness of legal aid provisions needs improved coordination among providers of legal aid and other stakeholders, reduced paperwork and streamlining of procedures.

(iv) Obstacles for marginalized groups: The disadvantaged communities, including those residing in villages, associated with linguistic minorities or subjected to social taboo, mostly encounter obstacles in availing legal aid. Cultural sensitivities, linguistic barrier, lack of transportation, and geographical boundaries can all create issues in availing legal services. To tackle this difficulty, legal aid initiatives need to adopt more inclusive and accessible strategies.

³² Criminal Appeal No. 215 of 2016.

³³ AIR 1982 SC 1473.

³⁴ Andrew Higgins, “Legal Aid and Access to Justice in England and India” 26 *NLSIR* (2014), published at www.manupatra.com

³⁵ AIR 1980 SC 1622.

³⁶ *Ibid.*

³⁷ (1983) 2 SCC 96.

³⁸ Anna Nylund, “Access to Justice: Is ADR a help or hindrance?” Springer 3-4 (2014), also available at https://www.researchgate.net/publication/288390701_Access_to_justice_Is_ADR_a_help_or_hindrance

³⁹ Prabhjot Singh Chahal, “Legal Aid in India: Enhancing Access to Justice for All” 6(2) *International Journal for Multidisciplinary Research (IJFMR)*, 5 (2024).

EXPANDING THE HORIZONS OF ACCESS TO JUSTICE

The loopholes in contemporary legal structure in India is insufficient to safeguard the rights of vulnerable people to the fullest extent. These individuals find the system alien and thus fail to access the means to achieve justice. Thus, there is a dire requirement to broaden the scope of “access to justice” for reaching the disadvantaged groups and for that few recommendations are provided-

- (i) The public should be sensitized regarding complex legal processes and redressal guaranteed to the marginalized under the Indian Constitution⁴⁰.
- (ii) There exist various hindrances to justice in the shape of logistical, linguistic, geographic, financial or gender-specific. Emphasis shall be on enhancing the quantity and quality of justice in the form of better information concerning justice mechanism, more citizen-oriented court officials and better prepared defence counsels.
- (iii) More ADR centres shall be established for resolving the issues out-of-court particularly in tribal and rural areas. Negotiation and mediation should be incorporated as an element of constitutional initiative.
- (iv) In a nation like India where adversarial system is adopted, the expediency of the judicial proceeding has been compromised. There is no accountability on the judges and advocates. Thus, there is a need to make the court officials accountable by invoking rules of bar council and service rules.
- (v) For increasing the physical availability of judiciary, there is a need to enhance the number of inferior and High Courts in the concerned States. The power of Family Court could also be strengthened.
- (vi) Another major concern is accessibility to constitutional courts. For instance, fundamental rights can be invoked only before Apex Court and different High Courts. Therefore, there is a need to re-asses the jurisdiction of the lower courts.
- (vii) The marginalized tribal and rural people who are not able to afford the legal assistance attain justice through informal mechanism such as Khap Panchayat wherein extremist forces exploits the parties. Thus, there is a need for strengthening the Village Nyayalayas to effectuate the constitutional ethos of legal aid and justice and assure that those values are incorporated into the adjudication-justice⁴¹.

CONCLUSION

The development of legal aid in Indian context reveals a journey associated with realisation of the basic standards of fairness, equality and justice in the Indian Constitution. It can be concluded that legal aid is a cornerstone to assure that no one should be left to access to justice. Despite issues like complicated legal systems, bureaucratic hindrances and scarcity in funding, legal aid is very significant in safeguarding rights, affirming the rule of law and ensuring social justice. It signifies the government’s commitment in removing the obstacles which might prevent people from availing justice and reinforcing the norm that justice shouldn’t be denied merely due to some kind of disability. As the schemes related to legal service consistently develops and broaden, they result into contribution of realizing a more just and equitable society in the nation. It’s significant to state that the future of Indian legal aid is dependent on the priorities of the State, civil society, legal community and the growing necessities of the people. The target should always be to assure that justice is available to all, especially who face disabilities in availing legal system or is economically vulnerable.

⁴⁰ Komal Audichya & Nikita Audichya, “Expanding Access to Justice to reach the poor and the marginalized communities” *Bharati Law Review* 213 (2016).

⁴¹ Aditya Singh and Maneka Guruswamy, “Accessing Injustice, The Gram Nyayalayas Act 2008” 45(43) *Economic and Political Weekly EPW*, 19 (2010).