



## REVIEW ARTICLE

### REVISITING JUSTICE DELIVERY IN INDIA: LEGAL AID AS A CONVERGENCE OF CONSTITUTIONAL MANDATES AND JUDICIAL ENFORCEMENT

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#### ABSTRACT

Access to justice is an essential element in the democratic process. Whatever rights and responsibilities exist they are worthless unless those rights and responsibilities are fully observed irrespective of socio-economic status anyone. Legal aid implies legal assistance to people who are otherwise unable to afford legal representation and unable to defend themselves adequately due to their poverty, social disadvantage, or marginalization. The legal aid for those who cannot afford other means of access to justice has become an essential component in the elements of developed societies. However, the relevance of legal aid in providing access justice in civil and criminal justice system has been undertaken based on economic incapacity, social vulnerability and the loss of liberty each of which prevents an equal access to justice. This article examines the evolving legal landscape surrounding legal aid in India and underscores the responsibility of the State, as a welfare state, to guarantee access to justice as a constitutional mandate and judicially enforced right.

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## INTRODUCTION

**Access to justice** is a fundamental pillar of any democratic society. Without meaningful access to justice, the promise of rights enshrined in the Constitution remains hollow. Legal aid has evolved into an indispensable element of access to justice. It plays a vital role in ensuring fairness in legal proceedings, particularly for the underprivileged who face systemic barriers to justice. In modern democratic societies, especially those with a welfare orientation, legal aid is not merely a charitable gesture but a state obligation, enshrined both constitutionally and statutorily. In India, the concept of legal aid has undergone a significant transformation, thus we can find a paradigm shift in the approach of the Supreme Court towards the concept of legal aid from a 'duty of the accused to ask for a lawyer' to a 'fundamental right of an accused to seek free legal aid as well as fundamental responsibility of the state to provide legal assistance'.

Without legal assistance, a poor or illiterate individual is effectively denied equal opportunity in seeking justice, thereby undermining the very idea of constitutional equality and fairness. Since the aim of the constitution is to provide justice to all. The judiciary has a duty to protect rights of the poor as also society as a whole. The judiciary through its significant judicial interventions has compelled and guided the legislature to come up with the suitable legislations to bring justice to the doorsteps of the weakest sections of the society. Indian judiciary has played the role in protecting the rights of Indian citizens especially the poor. Judicial activism, has significantly expanded the scope of legal aid, empowering the underprivileged to seek redressal for their grievances. Moreover, mechanisms like Lok

Adalats have been introduced to provide affordable, speedy, and accessible justice

at the grassroots level. These developments signify the judiciary's proactive role in bridging the gap between law and justice.<sup>1</sup>

**Legal Aid Concept:** Legal Aid is the method adopted to ensure that no one is deprived of justice due to their economic or social disadvantage. Legal aid is a concept to give assistance to people who are otherwise unable to afford legal representation or adequately defend themselves, owing to poverty, illiteracy, social disadvantage, or marginalization. Poverty should not be a reason for denial of adequate opportunity to defend themselves and resultant 'injustice'. No indigent should be deprived to get justice, legal aid is pivotal provision of access to justice. It is a welfare provision by the state to people who are beyond the access to the legal representation.<sup>2</sup> Legal aid should be as broad as possible, its aim "is to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people otherwise unable to afford legal representation and access to the court system. The human rights experts underlined that legal aid should not only include the right to free legal assistance in criminal proceedings, but also the provision of effective legal assistance in any judicial or extrajudicial procedure aimed at determining rights and obligations. Therefore, States bear the

<sup>1</sup> Nikunj Singh, Yadav Satish. Satish Kumar Mishra, Legal aid and Access to Justice in India, Publisher. Guided Self Publishing India, 2024, p

<sup>2</sup> Maj Gen Nilendra Kumar, 'Hand Book on Clinical Legal Education', Universal Law Publishing Co., New Delhi, 2013, p-154

primary responsibility to adopt all appropriate measures to fully realize the right to legal aid for any individual within its territory and subject to its jurisdiction. Hence, the right to legal aid must be legally guaranteed in national legal systems at the highest possible level, possibly in the Constitution.<sup>3</sup> Justice P.N Bhagavati<sup>4</sup> has clearly stated that objective of the legal aid in the society is the machinery of administration of justice become easily accessible and not out of reach of those who have to resort to it for enforcement of rights given to them by law. He rightly said that the poor and the illiterate should be able to approach the courts and their ignorance and poverty should not become impediment in the way of their obtaining justice from courts. The object of legal aid is to ensure justice, if an aggrieved person not have an opportunity to access court for securing justice for the reason of poverty or illiteracy etc. justice will be denied.

**Rule of Law and Access to Justice:** The learned Chief justice Dr Jitendra N. Bhatt has rightly said that legal aid as human right is implicit in article 7, 8 and 10 The Universal Declaration of Human Rights. It is also explicitly provided in the clause (3) of Article 14 of the international covenant on Civil and Political Rights. Furthermore, Article 6(3) (6) of the European Convention of Human Rights and Article 8(2) (E)) of the American Convention of Human Rights recognize legal aid as a fundamental right.<sup>5</sup> Justice Bhatt emphasizes that legal aid is not merely a service, but a system of legal technology for the peaceful transformation of society, aimed at ensuring equality and social justice. He rightly observed that free and competent legal aid to the society is very important for the effective survival for social system and its denial would mark the failure of the rule of law.<sup>6</sup>

Equal access to law for the rich and poor alike is essential to maintenance of rule of law. The rule of law does not mean that the protection of laws must be available only to a fortunate few or enforcement of their civil and political rights. The poor too have civil and political rights and rule of law is meant for them also, though it exists only on papers in reality also. Supreme Court in number of recent decisions gave a warning to the country that time has come to realize that there is urgent need to transform the judicial system into an effective instrument for delivering equal justice. Fortunately, this change is gradually taking place and Lok Adalat is playing a vital role in bringing about this change.<sup>7</sup>

**Indian Constitutional and Free Legal Aid:** Article 39A of the Constitution of India provides that State shall secure 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, schemes or in any other way-to ensure the opportunities for securing justice are not denied to any citizen by reason of economic or other disability.<sup>8</sup> The guarantee of equal justice guaranteed under Article 14 will be meaningless if poor or illiterate or weak persons cannot enforce their rights because of their poverty or literacy or weakness. Hence, legal aid should be provided to such person so that the guarantee of equal justice may be meaningful.<sup>9</sup> The right to free legal aid at the cost of the state to an accused who cannot afford legal services for reasons of poverty, indigence or incommunicado situation is part of fair, just and reasonable procedure under Article 21.<sup>10</sup> In India law makers have sought to postpone the immediate enforceability of the right to legal aid by incorporate it in to the constitution as a directive principle of state policy under article 39 A

in 1976.<sup>11</sup> The right for free legal aid further finds strength from section Section 341 of the BharatiyaNagarik Suraksha Sanhita (BNSS) which expands this right, ensuring legal aid is available not only during trials before the Court of Session but also in trials and appeals before any court where the accused is not represented by a pleader; the court shall assign a pleader for his defence at the expense of the state. In case an accused is not told of this right and, therefore, he remains unrepresented by a lawyer, his trial is vitiated by constitutional infirmity and conviction as a result of such trial is liable to be set aside. Order XXXIII of civil procedure code, 1908 exempts indigenous people from paying the court fee prescribed for the plaint if they don't have sufficient means to do so. The question of providing equal access to justice in India has engaged the interest of law marks, the central and state government, law academics judges and occasionally, the organized legal profession, as such it was not enough that the state proclaimed a formed right of equal access to justice for every citizen. The state was required to guarantee by affirmative action effective access to justice. Beginning about 1965 in the U S A, the UK and certain European countries, there was a practical approach to the notion of access to justice through the wave of legal aid<sup>12</sup>.

Legal aid must be seen not merely as a service but as a constitutional duty of the State and a societal obligation. Hence, Legal Services Authorizes Act, 1987, has been enacted, to provide legal services to poor and needy people, the organization of Lok adalats is a competent legal service authority. To make legal aid effective, Legal Services Authorities at all levels must adopt Alternative Dispute Resolution (ADR) methods to facilitate quick and amicable settlement of disputes. This not only reduces the burden on the courts but also ensures timely and cost-effective justice. The legislation provides for rendition of legal aid to all member of ST and SCs, to all women and children irrespective of their financial states, to victims of trafficking in human beings, to persons with disabilities, to victims of manmade disasters, ethnic violence, flood, drought, cast atrocity etc. an industrial workmen, persons in custody and those in receipt of income less than Rs 9000 per month<sup>13</sup>. However, Legal Services Authority (Amended) Act, 1995 provide for constitution of National Legal Service Authority, State Legal Service Authorities, District Legal Service Authorities along with the High Court Legal Service Committees and Taluk Legal Service Committees with a view to provide free legal aid and competent legal service as well as to organize Lok adalats in their respective spheres

**Judicial Accessto justice:** Legal aid to the poor and weak is necessary for the preservation of rule of law which is necessary for the existence of the orderly society. Unless poor illiterate man is not legally assisted, he is denied equality in the opportunity to seek justice. Therefore, as a step towards making the legal service serve the poor and the deprived; the judiciary has taken active interest in providing legal aid to the needy in the recent past. This paradigm shift reflects the judiciary's commitment to uphold the rule of law and ensure that justice is not the prerogative of the affluent, but a right equally accessible to all citizens. The language of Article 39-A is couched in mandatory terms as is clear by the use of the word 'shall' twice therein.<sup>14</sup> The Supreme Court in *Abul Hussan v. Delhi Vidut Board*<sup>15</sup> commended the system of Lok adalats, which seeks to reduce the load cases on the civil courts by providing an alternative dispute resolution machinery. The court has directed that more authorities ought to set up such adalats. The Act was amended in 2002, making it mandatory for the central authority or as the case may be, every state authority to establish permanent lokadalats in respect of public utility services.<sup>16</sup>

<sup>3</sup><http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13382&#sthash.gxSpbWZp.dpuf> (visited on 31.03.2016)

<sup>4</sup>Report of the Legal Aid Committee, 1971, p-5

<sup>5</sup>Dr. Kailash Rai, 'Public Interest Layering, Legal aid and Para Legal Services', Central Law Publication, Allahabad, 5<sup>th</sup> ed., 2008, p-183

<sup>6</sup> *Ibid*, at 183 & 184

<sup>7</sup>Sunil Deshta, 'Lok Adalats Genesis and Functioning' Deep & Deep Publication, New Delhi, 1995, pp-54&55

<sup>8</sup>*Id.*, at 55&56

<sup>9</sup> *Supra* note 5 at 183

<sup>10</sup>V. N. Shukla, 'Constitution of India', Easter Book Company, Lucknow, 12<sup>th</sup> ed., 2013, p-224

<sup>11</sup>S Muralidhar, 'Law, Poverty and Legal Aid access to Criminal justice', Lexis Nexis Butter Worth, New Delhi, 2004, p-1&2

<sup>12</sup> *Ibid* at 2&3

<sup>13</sup> *Supra* note 2, at 155

<sup>14</sup>Durga Das Basa, "Shorter constitution of India", Lexis Nexis Butter Worth Wadhwa, Nagpur, 14<sup>th</sup> ed., 2011, p-407

<sup>15</sup>AIR 1999 Delhi 88

<sup>16</sup> Transport service, postal telegraph or telephone service, supply of power, light or water to the public by any establishment, system of public conservancy

The Supreme Court in *M.H. Hoskot v. State of Maharashtra*<sup>17</sup> emphasized 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 39A but also by Articles 14 & 21 of Indian Constitution. In the absence of legal assistance, injustice may result and every act of injustice corrodes the foundations of democracy.<sup>18</sup> Article 39-A has been read together with Art.21 and thus free legal assistance at state cost has been raised to the status of a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty.<sup>19</sup> The court has also ruled that it would make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused person to ask for free legal aid. Accordingly presiding judge is obligated to inform the accused that he can obtain free legal service at the cost of the state if he is unable to engage a lawyer because of his indigence.<sup>20</sup>

In *Rajan Dwivedi v. UOI*<sup>21</sup> Supreme Court ruled that it cannot issue a writ of mandamus to enforce Article 39-A and it makes clear that the social objective of equal justice and free legal aid has to be implemented by suitable legislation or by formulating schemes for free legal aid.<sup>22</sup> In fact Legal Services Authority Act 1987 comprehensively provides for the rendition of free legal aid at all levels. Although the mandate in Article 39A is addressed to the legislature and the executive yet the courts can indulge in some judicial law making within the instances of the constitution or any statute before them for 'construction', the courts are too bound by this mandate.

Supreme Court in *Babubhai Udesin Parmer v. state of Gujarat*<sup>23</sup> emphasized that under Article 39A the state government undoubtedly has an obligation to set up a comprehensive and effective legal aid programme in order to ensure that the operation of the legal system promotes justice on the basis of equality. In *Sheela Barse v. State of Maharashtra*<sup>24</sup> the court directed all state government to make provisions for grant of free legal service to the poor accused persons. The only qualification would be that the offence charged against that accused is such that, on conviction, it would result in a sentence of imprisonment. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse where social justice may require that free legal service need not to be provided by the state.

Equal access to the law for the rich and the poor alike is essential to maintenance of the rule of law. It is therefore, essential to provide adequate legal service and representation to all those threatened as their life, liberty, property or reputation, who are not able to afford legal assistance. The primary dedication of the judiciary to the dissemination of the rule of law is not only the direct demand of their assigned role but draws sustenance as well. No true democracy can endure without a system of administration of justice of which the poorest are able to take advantage<sup>25</sup>. For success of legal aid programme it is necessary to involve public participation and for this purpose the best way is to operate through voluntary organization and social action groups. The state should encourage and support such bodies in operating the legal aid programme.<sup>26</sup>

## CONCLUSION

Despite the fact that free legal aid is a necessary adjunct to the rule of law and a vital component of access to justice, the legal aid movement in India has not yet fully achieved its objectives. There remains a significant gap between the goals envisioned and the outcomes realized. One of the primary obstacles to the success of the legal aid system is the lack of legal awareness among the general population. A large section of society, especially the poor and illiterate, remains unaware of their basic legal rights, leading to continued exploitation and denial of justice. Thus, it is the need of the hour that the poor illiterate people should be imparted with legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country. If the poor persons fail to enforce their rights because of poverty, illiteracy etc. they may lose faith in the administration of justice and instead of knocking the door of law and Courts to seek justice, they may try to settle their disputes on the streets or to protect their rights through muscle power and in such condition, there will be anarchy and complete dearth of the rule of law. Until and unless poor illiterate man is not legally assisted, he is denied equality in the opportunity to seek justice.

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or sanitation, service in hospital or dispensary, insurance service, and includes any service which the central government or the state government, as the case may be, in the public interest by Notification, declare to be a public utility service.

<sup>17</sup>(1978)3 SCC 544; AIR 1978 SC 1548

<sup>18</sup>*Hussainara Khatoon (4) v. State of Bihar* (1980)1SCC98: AIR 1979 SC1369

<sup>19</sup>*Suk Das v. VU of Arunachal Pradesh*, (1986)2 SCC 401; AIR 18986 SC 991

<sup>20</sup>*Khatri (2) v. State of Bihar*, (1981)1 SCC 627; AIR 1981 SC 928

<sup>21</sup>1983 SCR (2) 982, 1983 SCC (3) 307

<sup>22</sup>AIR 1983 SC 224

<sup>23</sup>(2006) 12SCC 268

<sup>24</sup>AIR 1983 SC 378; (1983)2 SCC 96

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<sup>25</sup>S.K Sarkar, 'Law Relating to Lok Adalats and Legal Aid', Orient Publishing Company, Allahabad, 2<sup>nd</sup> ed., 2010, p-42

<sup>26</sup>M.P. Jain, "Indian Constitutional Law", Lexis Nexis Butter Worths Wadhwa, Nagpur, 6<sup>th</sup> ed., 2011, pp- 1505-1506.