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## LEGAL AID KINDS IN INDIAN PERSPECTIVE

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### Abstract

This dissertation, authored by Dr. Preet Singh, a research scholar at the Department of Law, Maharshi Dayanand University Rohtak, provides an in-depth analysis of legal aid in India, examining its various kinds and the overarching framework within which it operates. Legal aid is a vital mechanism for ensuring access to justice, particularly for economically and socially disadvantaged individuals. This research is structured into several key chapters, starting with an introduction that outlines the fundamental concept and significance of legal aid.

The scope of legal aid is then discussed, followed by an exploration of its general meaning, content, and extent. The dissertation delves into the specific kinds of legal aid available within the Indian legal system, categorizing them into pre-litigation and post-litigation services. Pre-litigation legal aid focuses on prevention and includes activities like legal education, counselling, and awareness, aiming to reduce the burden on courts and provide timely justice. Post-litigation legal aid, on the other hand, involves support during and after legal proceedings to ensure fair representation and access to necessary resources.

The dissertation also highlights the roles of various legal frameworks, including the National Legal Services Authority (NALSA) and its initiatives to provide free legal services. The conclusion synthesizes the findings and offers suggestions for improving the delivery and effectiveness of legal aid in India. This comprehensive study underscores the importance of legal aid in maintaining the rule of law and promoting social justice in a democratic society.

**Keywords:** Legal Aid, Indian Legal System, Pre-Litigation Services, Post-Litigation Services, NALSA (National Legal Services Authority).

### Introduction

Government-funded legal help programmes assist low-income individuals. Legal assistance helps uphold welfare provisions like social housing by providing access to lawyers and courts. Legal aid has historically protected financial, social, and cultural rights in regard to social protection, affordable dwellings, social welfare, general wellbeing, and education services, both publicly and privately provided, as well as employee rights and anti-discrimination legislation.

### **Scope of Legal Aid**

NALSA and its website say legal assistance covers pre- and post-litigation services. The National Association of Legal Services Agencies (NALSA) defines “free legal services” as assisting low-income and disadvantaged people in civil and criminal proceedings in any courtroom, tribunal, or agency. Free legal services include ensuring access to justice regardless of how it is obtained, helping people seek benefits under state or federal welfare laws and programmes, and providing counsel.

## Legal Assistance

Democracy is built on the equality of all citizens, who are permitted particular freedoms and privileges that can only be enjoyed in a favourable socioeconomic environment that supports regulatory frameworks to restore any unlawfully denied rights. Once all citizens—wealthy and weak, rich and underprivileged—enjoy these freedoms and rights equally, it is crucial that socially and economically disadvantaged individuals be given some leverage to compete with the “fortunate ones” on an equitable playing field. If not, the rule of law and democratic society cease to exist. Because repressed and deprived citizens of a democracy should be allowed to enjoy their freedoms, liberties, and other rights without fear of extortion or annihilation, legal assistance must be credible.

As mentioned, democracy's foundation is the rule of law. A community cannot maintain order and stability without the rule of law. Social discontent and instability lead to society's destruction, which no civilization can afford. No matter how powerful or arrogant a few people are, the rule of law must prevail in a republic to ensure peace and prosperity. The Gujrat Committee on Legal Aid believes that the rule of law requires the average person to assert and protect his legal rights. It emphasises that legislation is useless unless it is actively effective and that a strong judicial system gives legislation life. Thus, everyone must have equal legal access regardless of economic condition, location, biology, or other criteria.

The Law Commission of India's 14th Report states that everyone must have access to justice to ensure legal equality. The report states: “Equality is the cornerstone of every system of law and the administration of justice.

Justice becomes inequitable, and the rules meant to protect him fail to the point that a person cannot reach a court of law to correct his wrongs or defend himself against a criminal charge. Unless the poor guy is helped with court fees, attorneys' fees, and other litigation costs, he is denied equal justice.

If most people don't have equal opportunities, it irritates them and makes them distrust the legal system and democracy. If you want people, especially the poor and downtrodden, to trust democracy and develop it, legal aid is essential. “The political thrust of the (legal aid) movement is that if legality lets down the masses and protects, in actuality, only the upper bracket, anti-law will become a way of life for the numerous poor, the people being prone to seek justice in the streets in preference to the law in the courts,” Justice Iyer stated plainly. WI advocates for the workforce by providing legal advice and representation in court, educating people about their legal rights and helping them exercise them, lowering or defraying litigation costs and time, listening to humble complaints, identifying areas where the law is deficient or dangerously ambiguous, and suggesting reform-oriented lawsuits or regulatory frameworks. Only legal advice can restore order. Law versus the poor causes tensions and widespread violations. Legal aid will offer economically disadvantaged people a legal voice if it works.

Thus, legal aid is necessary to maintain judicial rule and equal protection under the law in democracies. Modern laws cover every aspect of human life and are more complex and technical, making legal aid more important than ever. A peaceful, successful community needs laws that “must not only express justice but also act justly to do justice, and this can be accomplished only by pumping legal aid into the arteries of the judicial system.

### ”The General Meaning of LEGAL AID

Legal aid lets the less fortunate know that their fellow citizens support them in their struggle to uphold their legal protections and freedoms and get them reinstated if the stronger members of society try to take them away.

“The legal assistance implies making a structure in society so that the mechanism of administration of justice becomes easily accessible and is not out of the grasp of those who have to resort to it in order to enforce their rights under the law,” said Justice P.N. Bhagwati. “the destitute and the illiterate should be allowed to access the courts and their illiteracy and poverty should not be an impediment to their seeking justice from the courts,” Justice Bhagwati adds forcefully. “The spiritual essence of a legal aid movement consists in inviting law with a human soul: its constitutional ore is the provision of equal legal service as much to the

weak and in want as to the strong and affluent, and the dispensation of social justice through the legal order,” says justice V.R. Krishna Iyer.

Dr. N.R. Madhava Menon, a prominent academic and legal aid activist, defines legal aid as “the combined effort of the Law, the Community, and the Government to deliver the assistance of lawyers gratis or for a nominal price, to persons who cannot afford lawyer's charge.” More specifically, Professor Menon writes, “the concept means not only a representation through a lawyer at state expense in court proceedings but will include legal advice, legal awareness, legal mobilisation, public interest litigation, law reform, and a variety of strategic and preventive services which, rather than assisting such individuals on a case-by-case basis, will help them as a class to avoid helplessness arising from poverty.”

Thus, legal aid is a social arrangement that allows the weaker and more vulnerable individuals to exercise their legal rights and compete with the wealthy and strong through the legal system.

## MEANING OF LEGAL AID- THE CONTENT AND EXTENT

Legal Aid is needed in all societies—developed, developing, underdeveloped, past, present, and future—to help the poor and unequal navigate the expensive and complicated legal system to seek justice. Legal aid is particularly important for developing nations like India since it speeds up development and advancement. The legal tool can only be efficient and adequate if it is available to all individuals and institutions in society. Legal aid ensures an equal position in court and access to justice.

Free legal aid is a novel justice concept. It was born in a “welfare state,” where the government assures that everyone can grow and develop normally in a free, democratic atmosphere without hurdles or disadvantages. The state removes economic and social barriers to demonstrate equality, democracy's most important principle. In the event of a dispute, both parties have equal access to the legal procedure, regardless of their socioeconomic status. Even if the proprietor or pauper was modest and feeble, justice was done and delivered. Legal aid bridges the gap between two expensive justice buyers. Naturally, the poor and powerless receive such aid.

Thus, legal aid is social help provided to someone with a legal issue who lacks the money and means to pursue justice on an equal basis with the opposing party. Legal aid is the community's help in giving an unequal member equal access to justice. This benefit's contents and coverage vary depending on society's needs, consciousness, and resources.

## LEGAL AID KINDS IN INDIAN PERSPECTIVE

The Legal Aid Concept has two broad dimensions which are as follows:

- The usual plan is to give money to a poor person with a case in a court, administrative tribunal, or government agency.
- The second component of the legal aid programme is referred to by Justice Bhagwati as the “Preventive Legal Aid Services Program.” In a developing country like India, where poverty, ignorance, and illiteracy are widespread and the population is unaware of its rights and powerless to protect them, this movement is crucial. They rarely know about legal or administrative recourse. Our adversarial courts and tribunals exacerbate this. The adversarial system allows all kinds of litigation delays because it is dilatory. Our courts, including the Supreme Court, are clogged. District Courts are worse. Cases can last 10–12 years. Thus, India must prioritise preventive legal aid programmes.

The respected jurist describes the six components of the Preventive Legal Aid Service Program, widely implemented in India, as an essential feature of legal aid. Components:

The first applications of this initiative are Lok Adalats and legal aid camps in impoverished urban and rural areas.

- Legal awareness of social assistance laws and socioeconomic relief administrative measures is the second step. Legal aid should reach every village. Third, law schools and colleges should recruit law professors and students to run legal assistance clinics for the poor. Fourth, this effort promotes law studies that impact the disadvantaged. The sixth component of this initiative promotes PIL to protect underprivileged rights. Finally, paralegals and “barefoot lawyers” need a thorough programme.

## KINDS OF LEGAL AID

All necessary free legal services are offered to people through one of these divisions in order to make legal aid more financially sustainable. These divisions are pre-litigation legal aid and post-litigation legal aid. Today, the emphasis is on pre-litigation legal aid because the growing quantity of cases threatens the efficient administration of justice.

### PRE LITIGATION LEGAL AID

Pre-litigation services, such as pre-litigation settlement, legal education, counselling, and awareness, are intended to provide those in need with more beneficial and focused legal assistance. The goal of pre-litigation legal assistance, also referred to as the preventive component of legal aid, is to refute the idea that “delay in justice is rejected by justice.” Programs for pre-litigation legal help are consequently given priority in an effort to decrease the number of court cases and the financial burden on the state. It is true what they say: “Prevention is better than cure.” More lawsuits are filed today than ever before, which seriously jeopardises the effective delivery of justice. The only focus in the past was on post-litigation legal services, but it is now widely accepted that pre-litigation legal representation is more valuable. Pre-litigation services include things like legal counselling, education, awareness, and pre-litigation settlement.

Through financial assistance, the state has encouraged and boosted the volunteer organisations' capacity to provide pre-litigation services. The establishment of legal aid clinics in law schools and colleges of law is now common. The clinics have done great work raising legal awareness among the rural underclass. The necessity to establish a force of paralegal agencies was felt because neither the state nor nonprofit groups could run legal literacy programmes in all the rural and slum sections of the city. Paralegals are those who have a basic understanding of the law but not a complete one. The people who can educate the rural populace about their legal rights and obligations are known as para-legals. The force known as para-legals is able to travel to the most remote parts of society and help those in need with initial legal advice and support.

However, going to court should only be done as a last resort. The benefits of resolution are forfeited, and both parties are equally responsible for the costs of litigation. It is therefore advisable to avoid legal disputes if possible. If pre-litigation services are delivered skillfully, disputes can be settled without the need for formal litigation. The parties can avoid needless obstacles and challenges brought on by litigation if appropriate guidance is provided to them prior to starting a legal procedure. Legal literacy programmes aim to raise awareness and discourage the rural population from seeking legal assistance for frivolous or needless reasons. The phrase “delay in justice is denial of justice” is true. Pre-litigation legal service programmes should therefore be given top priority because they will aid in reducing the backlog of cases before the courts. As a result, Lok Adalats have grown in popularity in recent years.

### POST LITIGATION LEGAL AID

Pre-litigation settlement, education, consultation, and awareness are intended to help individuals in need. “Delay in justice is denied by justice” is disproven by pre-litigation legal help. Pre-litigation legal help programmes are prioritised to reduce court proceedings and state costs.

Prevention is better than cure. More lawsuits than ever threaten the administration of justice. However, pre-litigation legal assistance is now known to be more valuable than post-litigation services, which were previously the main focus. Pre-litigation services include education, counselling, awareness, and settlement.

The state has funded voluntary groups to provide pre-litigation services. Law schools and colleges have legal clinics. The clinics have raised rural people's legal awareness. The state and voluntary organisations couldn't arrange legal literacy camps in all the city's villages and slums, thus paralegal agencies were needed. Paralegals have basic legal knowledge. Paralegals can educate rural people about legal rights and responsibilities. Paralegals can go into the interior of society to help needy people with legal matters.

Litigation should be a last resort, not a luxury. The parties share litigation costs and lose resolution benefits. Avoiding legal issues is ideal. Competent pre-litigation services can resolve disputes without litigation. Before filing a lawsuit, parties should receive proper assistance to avoid unnecessary obstacles. Legal literacy programmes educate rural people to avoid using the courts for frivolous matters. Delay in justice is injustice. Thus, pre-litigation legal service programmes should be prioritised to reduce court arrears. This makes Lok Adalats popular today.

## FREE LEGAL AID IN INDIA

In *Hussainara Khatoon*,<sup>1</sup> The petitioner informed the Supreme Court that the majority of the people currently facing trials had already complied with more sanctions than if they had been found guilty right away, offering the court an important opportunity to comment on the rights of the poor and needy. The parties could not afford an attorney, therefore the case was delayed. They struggled financially. The court concluded that Article 39-A's emphasis on free legal representation as an intrinsic component of a reasonable, fair, and just system was implied in Article 21's premise.

In *Khatri v. State of Bihar*,<sup>2</sup> The court considered whether low-income litigants should receive free legal representation. The Constitution requires the state to provide this assistance during the trial and when the defendant is first brought before a magistrate or remanded, so financial constraints cannot be used to deny this right.

In *Suk Das v. Union Territory of Arunachal Pradesh*, Justice P.N. Bhagwati noted that educating the underprivileged about their rights, including the right to free legal help, is crucial. adding that most rural Indians are ignorant and unaware of their rights. Even literate folks don't know the law's protections. They don't know where to start, so they don't hire lawyers.

According to India's social justice crusader Justice Krishna Iyer, if a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and legislative rights to appeal, the court can grant exceptional leave to the Supreme Court under Article 142, Articles 21 and 39-A.<sup>3</sup>

Although the law was created to safeguard the poor, governments have been hesitant to implement it. Every major government branch has a legally recognised public obligation to uphold the rule of law and the constitution by enacting regulations to carry out such legislation. The poor should not be priced out of the legal system by insisting on court fees and refusing to use the exemptive provisions of Rule XXXIII, CPC, the Apex Court in *State of Haryana v. Darshana Devi*.<sup>4</sup>

Haryana has requested permission to challenge the high court's judgement that correctly expanded the "pauper" rules to auto-accident claims, notwithstanding the Magna Carta of the Republic's Article 14 and Article 39A requirements for equitable justice for the poor. The ruling said the provisions should be followed. Order XXXIII governs civil-court-like tribunals. Even though it's been a while since the legislation, the court expressed its concern that no government has yet produced regulations to execute Order Xxxii, Rule 9A's charitable legal aid to the needy. The executive and legislative branches are paralysed.

The government does not automatically enforce poor-benefitting laws. A statutory mechanism that provided free legal assistance by picking an attorney to represent criminal cases and omitting court fees in civil cases did not hinder the poor's capacity to seek justice. The Supreme Court's constitutional arguments persuaded the Indian parliament to pass the LSA Act, 1987. The Act defines legal aid eligibility.

The law establishes who is qualified to receive aid and who is not.

- a girl or woman; an individual who is mentally ill or otherwise impaired; a member of a SC or ST;
- a person in need, such as a victim of a major disaster, racial tensions, caste discrimination, a storm, a drought, an earthquake, or an industrial disaster; or a person who is homeless as defined by Article 23 of the Constitution. or

<sup>1</sup>"*Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98."

<sup>2</sup>"*Khatri v. State of Bihar*, AIR 1981 SC 262."

<sup>3</sup>"*M.H. Hoskot v. State of Maharashtra* (1978) 3 SCC 81".

<sup>4</sup> AIR 1972 SC 855.



- an industrial worker; or
- a person who is in custody

State legislatures can raise this income cap. SCs, STs, women, children, the disabled, and others are income-exempt. Thus, the Indian Parliament had advanced its goal of expanding legal aid to citizens. Civil, criminal, and revenue courts are “courts” under the Act. The Act defines “legal service” as both legal advice and the conduct of any case or other legal procedure before such a court, agency, or tribunal.

After assessing the applicant's qualifying conditions and finding a prima facie case in his favour, the Legal Services Authorities appoint an attorney for him at no cost, pay the court charge, and cover all incidental costs.

The person getting legal aid does not have to pay until the Legal Services Authority approves the case.

### Conclusion

The Act proposes a national legal aid network. The NALSA is responsible for developing the most effective and successful legal services programmes and Act-compliant rules and procedures.

Each DSA implements the district's legal aid programmes.

The 2010 NALSA (Free and Competent Legal Service) Regulations ensure free legal services from trained attorneys. The most important feature of the regulation is the frequent use of senior, qualified attorneys in life-threatening situations. This authorises fee-for-service attorneys. The Supreme Court of India established the SCLSC to give free legal representation to the destitute and needy under the LSA Act. As an ex-officio chairperson, each taluk local court system has a senior civil judge with local courtroom expertise. The 2010 National Access to Justice Act (NALSA) Regulations guarantee free, high-quality legal representation. In extreme instances, it is permissible to hire a senior, skilled attorney for a fee. After the LSA Act, the Supreme Court of India formed the SCLSC to give free legal assistance to the needy and disadvantaged. Thus, Legal Aid ensures that the weak and vulnerable are treated equitably and that the constitution is preserved in letter and spirit. Despite widespread agreement that free legal counsel is essential to the rule of law, the movement has yet to succeed. Goals set and achieved differ greatly. Legal aid in India faces the biggest challenge of legal illiteracy. Legal aid hasn't succeeded because individuals don't know their rights. Exploitation and the loss of rights and benefits stem from legal ignorance.

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