



# Role Of Judiciary In The Development Of Legal Aid In India

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## Abstract

The maintenance of the rule of law, which is essential for the existence of an ordered society, depends on providing legal assistance to the poor and vulnerable. Poor uneducated guy is denied equal access to justice up until and until he receives legal assistance. The judiciary has recently shown a keen interest in offering legal aid to the disadvantaged as a step towards having the legal system serve the underprivileged and the destitute. The Indian Constitution guarantees an impartial and independent judiciary, and courts are empowered to uphold the constitution and protect peoples' rights regardless of their socioeconomic circumstances. The constitution mandates that the judiciary has a duty to defend the rights of the underprivileged as well as the rights of society as a whole since the goal of the constitution is to deliver justice for everyone and because the directive principles are an essential component of the constitution. Through its substantial judicial interventions, the judiciary has forced and directed the legislature to create the necessary laws to deliver justice to the doorsteps of the most vulnerable members of society. One illustrative example of how the Indian court has acted as the forerunner of Indian people' rights, particularly those of the poor, is public interest litigation. It inspired those with a sense of responsibility to work for the poor's justice. The Supreme Court significantly loosened the rules as a result. The Lok Adalat system has been introduced as one of the ways to give free legal assistance and swift justice at the doorsteps of the poor, in addition to public interest litigation and judicial activism, with the goal of making justice cheap and simple. The author of this post emphasises the significance of free legal assistance in a constitutional democracy like India, where a sizeable portion of the population has yet to experience the constitutional guarantees of even the most basic fundamental rights being fulfilled for them.

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**Keywords:** Fundamental right, Legal aid, directive principles, justice.

## Introduction

Legal aid refers to providing free legal assistance to the underprivileged and disadvantaged who cannot afford a lawyer to represent them in a lawsuit or legal action before a judge, jury, or other authority. Legal Aid is the strategy used to make sure that no one is denied access to expert counsel and assistance due to a lack of funding. Therefore, the major goal of ensuring equal justice is to make it accessible to the underprivileged, oppressed, and weaker members of society. In this respect, Justice P.N. Bhagwati made the following observations.<sup>2</sup>

“The legal aid means providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law, the poor and illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts. Legal aid should be available to the poor and illiterate, who don't have access to courts. One need not be a litigant to seek aid by means of legal aid.”

Therefore, legal aid is to be made available to the poor and needy by providing a system of government funding for those who cannot afford the cost of litigation. Legal assistance works to ensure that the constitutional guarantee is upheld in text and spirit and that the impoverished, oppressed, and weaker segments of society have access to equal justice. It is important to note that the Indian Constitution mandates<sup>3</sup> that the State ensure that the administration of the legal system promotes justice on the basis of equal opportunity and, in particular, shall provide free legal aid, through appropriate legislation or schemes or in any other manner, to ensure that opportunities for securing justice are not denied to any citizen due to economic or other disabilities. The Indian Constitution also requires the State to provide equality before the law and a legal system that advances justice based on equal opportunity to all.<sup>4</sup>

## Legal Aid in India: Legislative Measures

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<sup>2</sup> Speaking through the Legal Aid Committee formed in 1971 by the State of Gujarat on Legal Aid

<sup>3</sup> Article 39A of the Indian Constitution

<sup>4</sup> Articles 14 and 22(1) of the Indian Constitution.

The Indian Constitution also requires the State to provide equality before law and a legal system that advances justice based on equal opportunity to all. The ability of the underprivileged to obtain judicial redress for their grievances was not significantly impacted by the statutory procedure that provided free legal aid by designating the advocate for defending criminal cases and by exempting court fees in civil cases. As a result, the Supreme Court exerted great constitutional pressure on the Indian government to approve the Legal Services Authorities Act, 1987. The Act specifies the requirements for providing legal assistance to those who qualify. It makes someone qualified for aid under the statute.

if he is –

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;
- (d) a mentally ill or otherwise disabled person;
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home or in a juvenile home
- (h) of in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or
- (i) A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government<sup>5</sup>

This limit on income can be increased by the state governments. Limitation as to the income does not apply in the case of persons belonging to the scheduled castes, scheduled tribes, women, children, handicapped, etc. Thus by this the Indian Parliament took a step forward in making the legal aid possible in the country.

According to the Act, a 'court' is a civil, criminal, or revenue court, as well as any tribunal or other institution established under any legislation now in effect to perform judicial or quasi-judicial activities.<sup>6</sup> According to the Act, 'legal service' includes providing any service in the conduct of any case or other legal action before any court, other body, or tribunal, as well as providing advice on any legal topic.<sup>7</sup>

<sup>5</sup> Section 12 of the Legal Services Authorities Act, 1987.

<sup>6</sup> Section 2(1) (a) of the Legal Service Authority Act, 1987

<sup>7</sup> Section 2(1)(c) of the Legal Service Authority Act, 1987.

The Legal Services Authorities, upon evaluating an applicant's eligibility and finding a strong initial case in their favor, offer legal representation at the state's expense. They cover the necessary court fees and all associated expenses related to the case. The individual receiving this legal aid isn't required to contribute financially throughout the litigation, provided it's endorsed by a Legal Services Authority.

The Act has outlined a comprehensive network for the provision of legal aid and support nationwide. The highest governing body in this regard is the National Legal Services Authority (NALSA), responsible for establishing policies and guidelines to ensure accessible legal services as per the Act's provisions. NALSA also devises cost-effective and efficient schemes for legal services.

In each state, a State Legal Services Authority is established to implement the policies and directives of the central authority (NALSA) and provide legal services to the populace. Additionally, these authorities organize Lok Adalats within their respective states. The Chief Justice of the State High Court serves as the Patron-in-Chief of the State Legal Services Authority, with a designated serving or retired High Court Judge nominated as its Executive Chairman.

At the district level, a District Legal Services Authority is formed in every district to carry out Legal Aid Programs and Schemes. The ex-officio Chairman of this authority is the District Judge.

Taluk Legal Services Committees are established for each Taluk, Mandal, or a group of Taluks or Mandals to oversee legal services activities in the respective areas and to orchestrate Lok Adalats. Each Taluk Legal Services Committee is led by a senior Civil Judge operating within the Committee's jurisdiction, serving as its ex-officio Chairman.

To ensure the provision of proficient and cost-free legal services, the NALSA has formulated the National Legal Service Authority (Free and Competent Legal Service) Regulations in 2010. A notable aspect of these regulations is the engagement of experienced senior lawyers, compensating them with standard fees, particularly in critical cases where an individual's life and freedom are at risk.

The Supreme Court of India has also established the Supreme Court Legal Services Committee (SCLSC) to guarantee free legal assistance to the impoverished and underprivileged, as mandated by the Legal Services Authorities Act. The SCLSC is led by a Supreme Court judge and includes distinguished members nominated by the Chief Justice of India. This committee maintains a panel of capable Advocates on record with a stipulated minimum level of experience to handle cases in the Supreme Court. Additionally, the SCLSC has a full-time Legal Consultant who offers legal guidance to indigent litigants, either through in-person consultations or by mail.

## Judicial Contribution in Development of Legal Aid in India

The Supreme Court of India had a significant opportunity to strongly affirm the rights of the impoverished in the *Hussainara Khatoon v. State of Bihar*<sup>8</sup>. The petitioner brought to the Court's attention that many under trial individuals had already faced more punishment than they would have received if convicted promptly. This delay stemmed from their inability to engage legal representation due to their financial constraints. In this case, the Court emphasized that Article 39-A highlighted free legal assistance as an essential aspect of a "reasonable, fair, and just" process, implicit in the guarantee of Article 21.

Two years later, in the *Khatri v. State of Bihar*<sup>9</sup>, the Court addressed the right to free legal aid for financially incapable or indigent accused individuals unable to afford lawyers. It stated that the state is constitutionally obligated to provide this aid not only during the trial but also from their first appearance before the magistrate and throughout the legal process. This right cannot be denied based on financial limitations, administrative challenges, or the accused's failure to request it. Magistrates and Sessions Judges must inform the accused of these rights. The right to free legal services is a vital aspect of a fair and just process for an accused person, implicit in the guarantee of Article 21, and the State is constitutionally mandated to provide a lawyer if the circumstances and the needs of justice necessitate it. The State cannot evade this responsibility by citing financial or administrative limitations or the fact that the aggrieved prisoners did not seek legal aid.

In *Suk Das v. Union Territory of Arunachal Pradesh*<sup>10</sup>, Justice P.N. Bhagwati stressed the importance of creating legal awareness among the poor, who often lack knowledge of their rights, particularly the right to free legal aid. He noted that a significant portion of the Indian population, particularly those in rural areas, are illiterate and unaware of their legal rights. Even literate individuals are often uninformed about their rights and entitlements under the law. Due to this lack of legal awareness, they do not seek legal consultations and advice, hindering their self-reliance and ability to help themselves. Consequently, promoting legal literacy has been a fundamental aspect of the legal aid movement in India, as even the right to education cannot achieve its true objective without accessible education about legal entitlements. The constitutional promise of delivering justice to the people's doorstep would remain elusive without this awareness.

Justice Krishna Iyer, a proponent of social justice in India, rightly stated that if an imprisoned individual is practically unable to exercise their constitutional and statutory right to appeal due to lack of legal assistance, the Court, under Article 142 read with Articles 21 and 39-A of the Constitution, possesses the power to assign counsel for such individuals to ensure "complete justice".<sup>11</sup>

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<sup>8</sup> (1980) 1 SCC 98.

<sup>9</sup> AIR 1981 SC 262.

<sup>10</sup> AIR 1986 SC 991

<sup>11</sup> M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 81

It is a legally acknowledged public duty of each branch of the government to uphold the rule of law and honor the constitution by formulating rules to implement legislation intended to assist the poor. Although laws have been enacted to safeguard the poor, governments often exhibit reluctance in enforcing them. The Supreme Court observed in *State of Haryana v. Darshana Devi*,<sup>12</sup> that the poor should not be barred from accessing justice due to court fees, and the state's failure to implement laws meant to aid the indigent is a disheartening reality. Even after the enactment of laws for the benefit of the poor, states frequently fail to enact them through willful negligence, causing frustration among the people.

## Conclusion and Suggestions

Legal aid should not be viewed merely as a charitable act or a favor but rather as a fundamental obligation of the state and a right of its citizens.<sup>13</sup> The central goal should be to ensure "equal justice for all." Legal aid aims to honor the constitutional commitment in both letter and spirit, making certain that equal justice is accessible to the marginalized and vulnerable segments of society. Despite the acknowledgement that free legal aid is an essential component of the rule of law, the legal aid movement in India has not fully realized its objectives. There exists a significant disparity between the intended goals and the actual achievements. The primary impediment to the success of the legal aid movement is the lack of legal awareness. Insufficient awareness of basic rights leads to exploitation and the denial of rights and benefits to the underprivileged.

## Suggestions

- I. Legal Education and Awareness: It is imperative to educate the impoverished and illiterate population about legal knowledge and their fundamental rights, starting at the grassroots level of the country. This necessitates collaboration between the judiciary and state administration to conduct legal literacy programs effectively.
- II. Focus on Legal Aid: The judiciary should prioritize and emphasize the importance of legal aid, particularly in the present scenario where the gap between the privileged and underprivileged is widening. Utilizing free Legal Aid as a crucial tool can contribute significantly to eliminating social and structural discrimination against the less privileged.
- III. Effective Implementation of Laws: Although there are numerous precedents and legislations upholding the right to free legal aid, they often remain elusive for the masses due to ineffective implementation. Hence, the focus should shift towards effectively and properly implementing existing laws, making legal aid a reality rather than a mere concept.

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<sup>12</sup> AIR 1972 SC 855.

<sup>13</sup> Order 33, Rule 9A, Code Civil Procedure, 1908

IV. Utilizing ADR Methods: In providing legal aid, legal institutions at all levels should adopt appropriate Alternative Dispute Resolution (ADR) methods to expedite the process of compromise between parties involved in a case. ADR can aid in settling matters without the need for further appeals.

V. Adequate Funding for Free Legal Services Authorities: Free Legal Services Authorities must receive ample funding from the State to ensure that individuals are not deprived of professional advice and assistance due to financial constraints. Sufficient funds are crucial to uphold the principles of justice and equal access to legal aid.

