



# A Critique of Legal Aid in India: Past, Present & Beyond.

*The concept of seeking justice cannot be equated with the value of dollars.*

*Money plays no role in seeking justice ~ Justice Blackmun<sup>1</sup>*

## Abstract

Legal aid, conceived as the bedrock of a democratic liberal society committed to equality before the law, has traversed a tumultuous journey in India. Despite the constitutional mandate under Articles 39-A and 14 to ensure that justice is neither denied nor diluted due to economic or social disadvantage, the operationalisation of legal aid has often oscillated between optimism and inconsistent implementation. The evolution of India's legal aid framework from its pre-constitutional philanthropic efforts to its systematic institutionalisation as a constitutional obligation reveals a deeper socio-legal tension between the promise of access to justice and the lived reality of marginalised communities. In today's time, while technological interventions, alternative dispute-resolution mechanisms and community-based legal empowerment initiatives have expanded the contours of legal aid, the system continues to encounter structural deficiencies, including inadequate funding, poor awareness, bureaucratic bottlenecks, and entrenched socio-economic hierarchies. This research paper undertakes a critical examination of legal aid in India across its historical, contemporary, and prospective dimensions, interrogating whether the existing paradigm can fulfil its constitutional vision or whether a fundamental reconceptualization is imperative for a sustainable and realistic future.

## Introduction

Legal aid and access to justice constitute the foundational pillars upon which the Indian legal system rests. Legal aid refers to the provision of free or subsidised legal services to individuals who lack the financial capacity to secure legal representation or bear the ancillary costs associated with legal proceedings.<sup>2</sup> Closely allied to this is the concept of access to justice, which embodies the fundamental right of every individual to seek redress through "fair, reasonable, and just" mechanisms. One of the principal objectives of any legal system is the maintenance of social order and the administration of justice. In a democratic liberal society, it is imperative for these legal systems to be established as supreme, because by the virtue of its mere existence, it not only safeguards the rights and liberties of citizens but also functions as a check on the actions of other institutional actors. These principles are firmly entrenched in the Constitution of India, particularly under Article 21, which guarantees the right to life and personal liberty, and Article 39A, introduced by the Forty-Second Constitutional Amendment. Article 39A mandates the State to ensure that the operation of the legal system promotes justice on the basis of equal opportunity and, in particular, obliges it to provide free legal aid through suitable legislation or schemes so that access to justice is not denied to any citizen on account of economic or other disabilities. In India, the delivery of legal aid is not confined to State institutions alone but is also facilitated through non-governmental organisations, pro bono legal practitioners, and specialised legal aid bodies.

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<sup>1</sup> Jackson V Bishop, 404 F.2D 571 (1968).

<sup>2</sup> Khanna, Bhavay. Legal Aid and Access to Justice: A Socio Legal Perspective. Unpublished manuscript, 2024.

The entire framework operates in consonance with the principles of natural justice, most notably *audi alteram partem*,<sup>3</sup> which affirms the right of both parties to be heard. By ensuring inclusivity and procedural fairness, legal aid mechanisms reinforce public confidence in the judiciary and strengthen democratic governance.

## Historical Evolution

The concept of legal aid can be traced back to France, where, in 1851, legislation was enacted mandating lawyers to provide assistance to indigent persons. In the United Kingdom, structured State intervention began in 1944 with the appointment of the Rushcliffe Committee by Lord Chancellor Viscount Simon to examine the provision of legal assistance to the economically disadvantaged in England and Wales. In India, the earliest initiative towards institutionalised legal aid was undertaken by the Bombay Legal Aid Society. Subsequently, in 1949, the “Committee on Legal Aid and Legal Advice in Bombay” was constituted under the leadership of Justice P.N. Bhagwati. Around the same period, Sir Arthur Trevor Harries, then Chief Justice of the Calcutta High Court, established a committee dedicated to advancing the cause of legal aid. These efforts underscored that free legal aid was not a mere matter of procedural convenience but a question intrinsically linked to the character and conscience of the legal system.<sup>4</sup>

In the post-colonial era, the Forty-Second Amendment to the Constitution in 1976 formally introduced Article 39A as a Directive Principle of State Policy, thereby imposing a constitutional obligation upon the State to ensure equal justice and provide free legal aid to the economically marginalised. Additionally, Article 14 enshrined the principle of equality before the law, necessitating a legal framework that guarantees fair representation to all. Over time, legal aid came to be recognised not merely as a statutory benefit but as an essential facet of the right to life under Article 21. Collectively, these constitutional mandates culminated in the enactment of the Legal Services Authorities Act, 1987. Section 2(c) of the Act defines “legal services” to include the rendering of legal representation before courts, tribunals, and other authorities, as well as the provision of legal advice on any matter. The Legal Services Authorities (Amendment) Act, 1994, which came into force on 9 November 1995, introduced significant modifications to strengthen the legal aid framework and facilitated the establishment of Lok Adalat’s to promote accessible and expeditious justice.

Under the chairmanship of Justice P.N. Bhagwati, the Committee for Implementing Legal Aid Schemes (CILAS) was constituted to supervise and coordinate legal aid initiatives across the country.<sup>5</sup> Philosophically, the concept of legal aid resonates with John Rawls’ first principle of justice, which asserts that every individual must enjoy equal access to a fully adequate system of basic liberties.<sup>6</sup> Among the most influential contributors to the evolution of legal aid in India was Justice V.R. Krishna Iyer, who conceptualised legal aid as “humanism in action” and cautioned against the transformation of legal systems into

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<sup>3</sup> Dev Kumar Sharma, *Legal Aid in India: Promoting Access to Justice and Empowering the Marginalized*, ILE EXPLORER (ILE LP), 1(1), 22-26 (2023).

<sup>4</sup> Dev Kumar Sharma, *Legal Aid in India: Promoting Access to Justice and Empowering the Marginalized*, ILE EXPLORER (ILE LP), 1(1), 22-26 (2023).

<sup>5</sup> *Legal Aid in the Criminal Justice System* (unpublished manuscript, n.d.)

<sup>6</sup> Khanna, Bhavay. *Legal Aid and Access to Justice: A Socio Legal Perspective*. Unpublished manuscript, 2024.

instruments of oppression. In 1973, as Chairman of the Committee on Legal Aid, he authored the seminal report *Processual Justice to the People*, which highlighted the intrinsic nexus between poverty and access to law. The report advocated for the development of Public Interest Litigation as a mechanism for addressing collective grievances and emphasised the need for a decentralised and proactive legal aid model that delivers justice at the grassroots level rather than compelling citizens to navigate inaccessible legal institutions. In 1977, Justice Krishna Iyer, in collaboration with Justice P.N. Bhagwati, submitted a joint report under the Juridicare Committee, introducing the concept of “Juridicare,” a system designed to ensure the delivery of legal aid at the doorstep of those in need, tailored to India’s socio-economic realities rather than replicating Western models.<sup>7</sup>

## Contemporary Legal Framework

In contemporary India, the principles of legal aid continue to find statutory expression under the *Bhartiya Nagarik Suraksha Sanhita, 2023*. Section 18 of the BNSS (erstwhile, Section 24 of the Criminal Procedure Code) provides for the appointment of Public Prosecutors at the expense of the State, while Section 341 (erstwhile, Section 304 of the CrPC) mandates the assignment of legal counsel to accused persons who lack sufficient means to engage a lawyer. The denial of fair legal representation constitutes a violation of the principles of natural justice, and it is to obviate such inequities that legal aid mechanisms have been institutionalised.

Eligibility for legal aid under the Legal Services Authorities framework extends to members of Scheduled Castes and Scheduled Tribes, victims of human trafficking as contemplated under Article 23 of the Constitution, victims of mass disasters, ethnic violence, or natural calamities, women and children, persons with mental illness or disabilities, and individuals whose income falls below the prescribed threshold of ₹9,000.<sup>8</sup> The services provided include exemption from court fees, expenses for drafting and filing legal documents, and costs associated with obtaining judgments, decrees, and other procedural requirements. However, legal aid is expressly excluded in matters relating to defamation, malicious prosecution, contempt of court, electoral disputes, and economic offences against social legislation, thereby ensuring that the integrity and objectives of the legal aid system remain intact and focused on the upliftment of marginalised communities.<sup>9</sup>

## Institutional Framework

The Legal Services Authorities Act establishes a multi-tiered institutional structure comprising the National Legal Services Authority (NALSA), the Supreme Court Legal Services Committee, State Legal Services Authorities, High Court Legal Services Committees, District Legal Services Authorities, and Taluk Legal Services Committees. NALSA commenced operations in January 1988, with the President of India serving as its Patron-in-Chief and the Chief Justice of India as its Executive Chairman. Its mandate

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<sup>7</sup> Dev Kumar Sharma, *Legal Aid in India: Promoting Access to Justice and Empowering the Marginalized*, ILE EXPLORER (ILE LP), 1(1), 22-26 (2023).

<sup>8</sup> Andrew Higgins, *Legal Aid and Access to Justice in England and India*, 26 Nat’l L. Sch. India Rev. 13, 13–30 (2014).

<sup>9</sup> *Legal Aid in the Criminal Justice System* (unpublished manuscript, n.d.)

includes the organisation of permanent Lok Adalat's, resolution of disputes prior to litigation, appointment of legal aid counsel in magistrate courts, and the establishment of counselling and conciliation centres nationwide.

At the State level, the State Legal Services Authorities operate under the patronage of the Chief Justice of the respective High Court, with a serving or retired High Court judge as Executive Chairman. District Legal Services Authorities, chaired by District Judges, coordinate legal aid activities at the grassroots level and supervise the functioning of Taluk Legal Services Committees. Collectively, these bodies engage in a wide array of activities, including legal representation before courts and tribunals, establishment of legal aid clinics in educational institutions, organisation of legal awareness programmes, and deployment of mobile legal aid units to reach remote areas.

A significant emphasis is placed on Alternative Dispute Resolution mechanisms, particularly Lok Adalat's and mediation, which facilitate amicable and expeditious settlement of disputes without imposing financial burdens on litigants. National Lok Adalat's are conducted simultaneously across the country, enabling the large-scale disposal of cases, while E-Lok Adalat's leverage technology to resolve disputes through virtual platforms. Mediation, grounded in mutual negotiation and collaboration, substantially reduces the burden on conventional courts and ensures timely justice. These comprehensive services extend across all stages of criminal proceedings, including pre-arrest, arrest, and remand, thereby ensuring that access to justice is not merely theoretical but practically realised for society's most vulnerable sections.<sup>10</sup>

## Judicial Precedents

In *Hussainara Khatoon v. State of Bihar*<sup>11</sup>, the Supreme Court was confronted with the alarming plight of undertrial prisoners who had been incarcerated for periods exceeding the maximum sentences they would have served had they been convicted. The Court unequivocally observed that the promise of justice embedded within the legal process would remain illusory for the economically disadvantaged unless a comprehensive, nationwide legal services programme was instituted to provide free legal assistance. Emphasising that procedural delays and the absence of effective legal representation strike at the very heart of fairness, the Court held that such systemic deficiencies amount to a direct violation of Article 21 of the Constitution, thereby transforming legal aid from a matter of charity into a constitutional imperative.

Similarly, in *Suk Das v. Union Territory of Arunachal Pradesh*<sup>12</sup>, the Supreme Court categorically ruled that the failure of the State to provide legal representation to an indigent accused at its own expense renders the trial constitutionally infirm. The Court acknowledged the socio-legal realities of India, noting that widespread illiteracy and lack of legal awareness prevent large sections of the population from understanding or asserting their rights. Consequently, the judgment underscored the necessity of legal literacy and awareness programmes to empower individuals and enable meaningful access to justice.

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<sup>10</sup> Khanna, Bhavay. Legal Aid and Access to Justice: A Socio Legal Perspective. Unpublished manuscript, 2024.

<sup>11</sup> *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81, 84 (India).

<sup>12</sup> *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401, 404 (India).

In *Sheela Barse v. Union of India*<sup>13</sup>, the Supreme Court recognised the heightened vulnerability of women prisoners, particularly those subjected to custodial violence, and stressed the indispensability of legal aid in safeguarding their fundamental rights. The Court held that Article 21 implicitly guarantees the right to a fair trial and further imposed a positive obligation upon the police to inform arrested persons, especially women, of their entitlement to free legal assistance, thereby reinforcing procedural safeguards against abuse of power.

The decision in *State of Haryana v. Darshana Devi*<sup>14</sup> reflects Justice V.R. Krishna Iyer's expansive and humanistic interpretation of access to justice. The Court extended the exemption provisions of the Civil Procedure Code to proceedings before Motor Accident Claims Tribunals and categorically asserted that no person should be denied entry into the legal system solely due to the prohibitive costs associated with seeking judicial redress. This judgment reaffirmed that economic incapacity cannot be permitted to operate as a barrier to justice.

In *K.N. Govindan Kutty Menon v. C.D. Shaji*<sup>15</sup>, the Supreme Court affirmed the statutory authority of legal services institutions at the district, state, and national levels to organise Lok Adalat's and render legal services in court-annexed proceedings as well as before tribunals and other adjudicatory bodies. The Court further emphasised that the promotion of legal awareness and legal literacy constitutes a core function of these institutions, essential to the realisation of substantive justice.

Finally, in *State of Maharashtra v. Manubhai Pragaji Vashi and Others*<sup>16</sup>, the Supreme Court clarified that the right to free legal assistance extends beyond the confines of the trial stage and encompasses the entire spectrum of criminal proceedings, including pre-trial investigation, police custody, and inquiry. The Court held that an accused is entitled to legal representation from the moment of arrest, as any denial at this preliminary stage creates a fertile ground for exploitation and miscarriage of justice. This ruling reinforces the expansive interpretation of Article 21 and cements legal aid as an integral component of fair procedure.

## Issues and the Way Forward

*"The poor man looks upon the law as an enemy, not as a friend."*<sup>17</sup>

One of the most persistent challenges is **inadequate funding**. Legal aid programmes operate within severely constrained budgets, which inevitably dilute their effectiveness by limiting both their reach and the quality of services provided.<sup>18</sup> Although the State does allocate funds

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<sup>13</sup> *Sheela Barse v. Union of India*, (1986) 3 SCC 596, 600 (India).

<sup>14</sup> *State of Haryana v. Darshana Devi*, (1979) 2 SCC 236, 239 (India).

<sup>15</sup> *K.N. Govindan Kutty Menon v. C.D. Shaji*, (2012) 2 SCC 51, 56 (India).

<sup>16</sup> *State of Maharashtra v. Manubhai Pragaji Vashi*, (1995) 5 SCC 730, 742 (India).

<sup>17</sup> Attorney General Robert Kennedy, Law Day Speech, May 1, 1964.

<sup>18</sup> Dev Kumar Sharma, Legal Aid in India: Promoting Access to Justice and Empowering the Marginalized, ILE LEXPLORER (ILE LP), 1(1), 22-26 (2023).

for legal aid, these allocations remain insufficient to meaningfully address systemic issues such as poorly trained counsel, overburdened caseloads, and delayed proceedings. This raises a fundamental normative question: should the State invest more heavily in access to justice? From the legal profession's standpoint, increased public expenditure on civil justice appears self-evidently necessary. However, from a broader philosophical and policy perspective, the issue is less straightforward. While legal aid undeniably consumes public resources, it may paradoxically result in long-term fiscal savings. Unrepresented litigants often prolong proceedings, compel judges to devote disproportionate time to procedural guidance, and increase the likelihood of cases being dismissed on technical grounds; outcomes that not only waste judicial resources but also inflict what has been termed a "double injustice" upon already disadvantaged individuals. At the same time, governments are compelled to balance competing priorities, including healthcare, education, sanitation, and other essential public services. Some scholars argue that legal aid should take precedence over all else, contending that without the rule of law, other social goods cannot be meaningfully sustained. Others advocate a more distributive approach, emphasizing the need for equilibrium across public services. Given that raising taxes for legal aid is politically unpopular, funding remains limited. While no serious commentator suggests that the State should underwrite every legal dispute or guarantee the highest conceivable standard of legal services, there is broad consensus that justice, like education or healthcare, must be provided at a level that is reasonable, equitable, and fiscally sustainable. Drawing on thinkers such as Ronald Dworkin, it may be said that individuals are entitled to a fair share of resources to vindicate their rights, but that share must remain realistic and affordable within the country's economic capacity.<sup>19</sup>

Another critical barrier is **limited awareness**. Marginalised and vulnerable populations frequently remain unaware of the existence of legal aid mechanisms or the benefits they confer, thereby being effectively excluded from justice due to ignorance rather than formal denial. To counter this, Legal Services Authorities have undertaken awareness initiatives such as legal literacy camps, pamphlet distribution, and community outreach programmes. Legal literacy clubs established in educational institutions further aim to inculcate foundational legal knowledge through interactive methods, including skits, poster-making, and discussions. In addition, print and social media platforms are increasingly employed to disseminate information and widen outreach.

**Geographical disparities** further exacerbate exclusion. India's vast territorial expanse and uneven development make universal access to legal aid particularly challenging. The absence of legal aid clinics in remote and underserved regions leaves large segments of the population without meaningful assistance. This gap can be mitigated through technology-driven solutions, such as mobile legal aid vans equipped with audiovisual tools and supported by trained paralegal volunteers, thereby extending basic legal services to otherwise inaccessible areas.<sup>20</sup>

Equally problematic is the **lack of meaningful participation by lawyers**. Many practitioners are reluctant to engage in legal aid initiatives due to inadequate remuneration, leading to a shortage of competent counsel for indigent litigants. In some cases, lawyers appointed under legal aid schemes fail to act in their clients' best interests, deliberately delaying proceedings or extracting additional payments from vulnerable individuals. Such practices not only

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<sup>19</sup> Andrew Higgins, , Legal Aid and Access to Justice in England and India, 26 Nat'l L. Sch. India Rev. 13, 13–30 (2014).

<sup>20</sup> Dev Kumar Sharma, Legal Aid in India: Promoting Access to Justice and Empowering the Marginalized, ILE EXPLORER (ILE LP), 1(1), 22–26 (2023).

undermine individual cases but also erode the ethical credibility of the legal aid system as a whole. Allegations of corruption, nepotism, and caste-based favouritism further complicate matters, with some lawyers treating legal aid less as a public service and more as financial support for struggling practitioners. Paradoxically, the underutilisation of funds earmarked for senior advocates suggests that the problem is not merely financial but is also rooted in entrenched social hierarchies and professional attitudes.<sup>21</sup>

From a forward-looking perspective, **technological innovation** offers significant promise. The integration of Artificial Intelligence and Machine Learning can streamline case management, automate repetitive processes, and enable data-driven policy formulation. Similarly, blockchain technology and smart contracts could enhance transparency, accountability, and security in legal transactions. The development of user-friendly digital platforms accessible to the general public in underserved regions would further democratise access to justice. However, technological solutions must be accompanied by robust mechanisms to address corruption and professional misconduct within the legal aid ecosystem.<sup>22</sup>

Judicial intervention has also played a transformative role. The Indian Supreme Court has consistently sought to lower procedural barriers and expand access to justice, particularly through the evolution of Public Interest Litigation. By liberalising rules of locus standi, the Court has enabled public-spirited individuals to seek enforcement of fundamental rights on behalf of those unable to approach the courts themselves. In *S.P. Gupta v. Union of India*, the Court emphatically held that where legal injury is suffered by persons who are socially or economically disadvantaged and unable to seek redress, any member of the public may initiate appropriate proceedings, so long as the purpose is the enforcement of a legal right.<sup>23</sup>

Comparative perspectives further enrich the discourse. Certain civil law jurisdictions mandate legal representation while simultaneously regulating legal fees through tariff systems to ensure affordability. Italy, for instance, has been commended by the European Court of Justice for maintaining such a model as an effective means of promoting access to justice, despite challenges based on competition law.

Finally, **law students represent an underutilised yet invaluable resource**. By engaging in legal aid activities such as legal literacy initiatives, dispute conciliation, and preventive legal services, students can contribute meaningfully to access to justice while gaining practical exposure. Integrating legal aid work into legal education would help cultivate a culture of social responsibility and bridge the persistent gap between doctrinal learning and real-world application. In this sense, experiential learning is not merely pedagogical reform but a foundational step toward building a sustainable and inclusive legal aid system.<sup>24</sup>

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<sup>21</sup> G. Oliver Koppell, Abstract of The Indian Lawyer as Social Innovator: Legal Aid in India, 3 Law & Soc’y Rev. 299, 300 (1968).

<sup>22</sup> Khanna, Bhavay. Legal Aid and Access to Justice: A Socio-Legal Perspective. Unpublished manuscript, 2024.

<sup>23</sup> Andrew Higgins, Legal Aid and Access to Justice in England and India, 26 Nat’l L. Sch. India Rev. 13, 13–30 (2014).

<sup>24</sup> Supriyo Routh, Providing Legal Aid: Some Untried Means, 50 J. Indian L. Inst. 375, 382 (2008).

## Conclusion

Legal aid and access to justice, as conceived within the Indian constitutional and statutory framework, represent not merely procedural entitlements but substantive guarantees essential to the preservation of the rule of natural law and democratic legitimacy. Despite significant jurisprudential evolution, institutional expansion, and constitutional endorsement under Articles 14, 21, and 39A, systemic constraints ranging from fiscal inadequacies and professional disengagement to structural inequities and limited legal consciousness continue to impede the realisation of equal justice. Addressing these deficiencies necessitates a recalibrated approach that harmonises ethical legal practice, technological innovation, judicial activism, and community-centric legal empowerment. Only through such an integrated and forward-looking framework can legal aid transcend its formalistic contours and emerge as a transformative instrument of social justice, ensuring that access to law does not remain a privilege of means but a universally enforceable right.