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# ARTICLE 39A AND THE RIGHT TO FREE LEGAL AID: IMPLEMENTATION CHALLENGES AND JUDICIAL ACTIVISM

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## ABSTRACT

This research paper provides a comprehensive analysis of Article 39A of the Indian Constitution and its role in establishing the right to free legal aid as a fundamental aspect of access to justice. Inserted through the 42nd Constitutional Amendment in 1976, Article 39A<sup>2</sup> mandates that the State shall ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The paper examines the constitutional and statutory framework governing legal aid in India, critically analyses the implementation challenges that have plagued the system for decades, and explores the transformative role of judicial activism in expanding and enforcing legal aid rights. Through detailed examination of landmark judgments, legislative frameworks, and ground realities, this study reveals significant gaps between constitutional promises and practical implementation, while highlighting how judicial intervention has been instrumental in bridging these gaps and expanding the scope of legal aid beyond its original conception.

**Keywords:** Article 39A, Legal Aid, Access to Justice, Constitutional Law, Judicial Activism, NALSA, Directive Principles, Equal Justice

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## INTRODUCTION

The right to legal aid stands as a cornerstone of any democratic legal system that aspires to deliver justice equitably across all sections of society. In India, this fundamental principle finds its constitutional recognition in Article 39A of the Constitution, which forms part of the Directive Principles of State Policy. The provision represents a significant milestone in the evolution of India's constitutional jurisprudence, recognizing that formal equality before law becomes meaningless if substantial sections of the population are unable to access legal remedies due to economic or other disabilities.<sup>3</sup>

The concept of legal aid transcends mere provision of free legal services; it embodies the constitutional commitment to substantive equality and social justice. As famously articulated by Justice V.R. Krishna Iyer, "*Access to justice is access to law and both constitute basic human rights in any civilized society claiming to be governed by the rule of law.*"<sup>4</sup> This philosophical foundation recognizes that justice delivery cannot be the preserve of the economically privileged, and that constitutional guarantees remain hollow without effective mechanisms to ensure their enforcement.

Despite more than four decades since the insertion of Article 39A and over three decades since the enactment of the Legal Services Authorities Act, 1987, the implementation of legal aid in India continues to face significant challenges. These range from inadequate financial resources and poor quality of legal representation to lack of awareness among target beneficiaries and structural inefficiencies in service delivery.<sup>5</sup> The gap between constitutional promise and ground reality remains substantial, raising critical questions about the efficacy of existing mechanisms.

However, this landscape of challenges has been significantly shaped by proactive judicial intervention. Indian judiciary, particularly the Supreme Court, has played a transformative role in interpreting, expanding, and enforcing the right to legal aid. Through a series of landmark judgments spanning several decades, courts have not only breathed life into Article 39A but have expanded its scope far beyond what was originally envisioned by the legislature. This judicial activism has been instrumental in recognizing legal aid as an integral part of the right

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<sup>3</sup> *M.H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544.

<sup>4</sup> *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.

<sup>5</sup> National Legal Services Authority, Annual Report 2023-24; Available at <https://nalsa.gov.in/annual-reports> last seen on November 12, 2025.

to life and liberty under Article 21, making it an enforceable fundamental right rather than merely a directive principle.<sup>6</sup>

This research paper undertakes a comprehensive examination of Article 39A and the legal aid system in India. It analyses the constitutional and legislative framework, identifies implementation challenges, explores the role of judicial activism in expanding legal aid rights, and offers recommendations for strengthening the system. The study draws upon constitutional provisions, statutory enactments, judicial pronouncements, empirical data, and comparative perspectives to present a holistic analysis of one of the most critical yet underperforming aspects of India's justice delivery system.

## CONSTITUTIONAL FRAMEWORK OF LEGAL AID IN INDIA

### *Historical Background and 42<sup>nd</sup> Amendment of Constitution*

The inclusion of Article 39A in the Constitution was not part of the original constitutional vision but emerged from a growing recognition of systemic barriers to justice that marginalized communities faced. Prior to 1976, while the Constitution guaranteed equality before law under Article 14 and equal protection of laws, there existed no specific provision mandating the State to provide free legal services to those unable to afford them.<sup>7</sup>

The 42<sup>nd</sup> Constitutional Amendment Act, 1976, introduced by the Indira Gandhi government during the Emergency period, brought about several significant changes to the Constitution. While many provisions of this amendment remain controversial, the insertion of Article 39A has been universally acclaimed as a progressive measure. The amendment was influenced by recommendations of various committees and the growing awareness about the justice delivery crisis facing poor and marginalized sections of society.<sup>8</sup>

The impetus for this constitutional amendment came from multiple sources. The Law Commission of India, in its reports, had highlighted the need for legal aid services. Social justice activists and legal scholars had been advocating for state-sponsored legal assistance. International developments, particularly the recognition of legal aid as a human right in various

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<sup>6</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>7</sup> Durga Das Basu, *Commentary on the Constitution of India*, Vol. 5, 8th Edition, LexisNexis, 2015, p. 234.

<sup>8</sup> The Constitution (Forty-second Amendment) Act, 1976, Statement of Objects and Reasons; Available at <https://legislative.gov.in> last seen on November 5, 2025.

international covenants, also influenced the discourse. The United Nations Covenant on Civil and Political Rights, to which India is a signatory, recognizes the right to legal assistance.<sup>9</sup>

The placement of Article 39A in Part IV of the Constitution, dealing with Directive Principles of State Policy, was deliberate. While Directive Principles are not enforceable by courts under Article 37, they are fundamental in the governance of the country and impose an obligation upon the State to apply these principles in making laws. This constitutional architecture was based on the understanding that implementation of such socio-economic rights required progressive realization and could not be immediately enforced as justiciable rights.<sup>10</sup>

### ***Article 39A: Text and Constitutional Significance***

Article 39A reads as follows:

*“The State shall secure that 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 or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”<sup>11</sup>*

The provision comprises two distinct but interconnected mandates. First, it requires the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity. This is a broader directive concerning the overall architecture and functioning of the justice delivery system. Second, it specifically mandates provision of free legal aid through suitable legislation, schemes, or any other means to prevent denial of justice due to economic or other disabilities.<sup>12</sup>

The phrase “*operation of the legal system*” is significant as it encompasses not merely the adjudicative process but the entire spectrum of legal system functioning, including access to courts, legal procedures, enforcement mechanisms, and related infrastructure. The emphasis on “*equal opportunity*” underscores the constitutional commitment to substantive rather than

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<sup>9</sup> International Covenant on Civil and Political Rights, 1966, Article 14(3)(d); Available at <https://www.ohchr.org> last seen on November 15, 2025.

<sup>10</sup> The Constitution of India, Article 37.

<sup>11</sup> The Constitution of India, Article 39A.

<sup>12</sup> *Supra note 2.*

formal equality.<sup>13</sup>

The term “*economic or other disabilities*” is deliberately broad and inclusive. While economic disability is explicitly mentioned, recognizing that poverty is the primary barrier to accessing justice, the phrase “other disabilities” has been interpreted expansively by courts to include social disadvantages, illiteracy, ignorance of legal rights, geographical remoteness, gender-based disadvantages, and various other factors that impede access to justice.<sup>14</sup>

Significantly, Article 39A does not prescribe a specific model for implementing legal aid but leaves flexibility to the State to choose appropriate mechanisms through “*suitable legislation or schemes or in any other way.*” This flexibility has enabled evolution of diverse mechanisms including legal services authorities, legal aid clinics, pro bono services, public interest litigation, and various innovative schemes.<sup>15</sup>

The constitutional significance of Article 39A extends beyond its textual content. It represents a constitutional recognition that formal legal equality is insufficient and that positive state action is necessary to ensure genuine access to justice. It acknowledges that the rule of law remains incomplete if large sections of the population are effectively excluded from the legal system due to their socio-economic circumstances. In this sense, Article 39A is intrinsically linked to the constitutional vision of establishing a just social order.<sup>16</sup>

### ***Linkages with Other Constitutional Provisions***

Article 39A does not operate in isolation but forms part of a comprehensive constitutional framework for ensuring justice and equality. Its effective implementation requires an understanding of its relationship with other constitutional provisions, particularly fundamental rights guaranteed in Part III and other Directive Principles in Part IV.<sup>17</sup>

The most significant linkage is with Article 21, which guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. The

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<sup>13</sup> H.M. Seervai, *Constitutional Law of India*, Vol. 2, 4th Edition, Universal Law Publishing, 2019, p. 1856.

<sup>14</sup> *Khatri v. State of Bihar*, (1981) 1 SCC 627, para 8.

<sup>15</sup> Upendra Baxi, *The Indian Supreme Court and Politics*, Eastern Book Company, 1980, p. 89.

<sup>16</sup> *Supreme Court Legal Aid Committee Representation v. Union of India*, (1994) 6 SCC 731; Available at <https://indiankanoon.org/doc/237570/> last seen on November 30, 2025.

<sup>17</sup> *Supra note 6.*

Supreme Court has consistently held that the procedure must be just, fair, and reasonable.

In the landmark case of *Maneka Gandhi v. Union of India*<sup>18</sup>, the Court transformed Article 21 into a repository of various unarticulated rights essential for human dignity. Subsequently, through judicial interpretation, the right to legal aid has been read into Article 21 as an essential component of fair procedure, thereby elevating it from a non-justiciable directive principle to an enforceable fundamental right in certain contexts.<sup>19</sup>

Article 14, guaranteeing equality before law and equal protection of laws, provides another critical foundation. The Supreme Court has held that equality before law would remain an empty formality if legal aid is not provided to ensure that the poor and disadvantaged can effectively assert their rights. Unequal access to legal representation creates substantive inequality in the operation of the legal system, violating the essence of Article 14.<sup>20</sup>

Article 22(1)<sup>21</sup> specifically provides that every person who is arrested shall have the right to consult and be defended by a legal practitioner of his choice. This right becomes meaningful only when it is coupled with the right to free legal aid for those who cannot afford legal representation. The Supreme Court has held that the right under Article 22(1) includes the right to legal aid for indigent accused persons.

Among the Directive Principles, Article 38<sup>22</sup> mandates the State to strive to promote the welfare of people by securing a social order in which justice—social, economic, and political—shall inform all institutions of national life. Article 39A must be read in conjunction with Article 38 as both provisions collectively aim at establishing a just social order. Similarly, Article 39(a), which requires the State to direct its policy towards securing adequate means of livelihood for all citizens, complements Article 39A's vision of ensuring access to justice irrespective of economic status.

The Preamble to the Constitution, which commits to securing justice—social, economic, and political—to all citizens, provides the overarching philosophical foundation for Article 39A. The concept of access to justice through legal aid is integral to fulfilling the constitutional

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<sup>18</sup> *Supra note 6.*

<sup>19</sup> *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.

<sup>20</sup> *State of Haryana v. Darshan Singh*, AIR 1979 SC 855.

<sup>21</sup> The Constitution of India, Article 22(1).

<sup>22</sup> The Constitution of India, Article 38.

promise of justice enshrined in the Preamble.

## LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

### *Legal Services Authorities Act, 1987*

To give effect to Article 39A, Parliament enacted the Legal Services Authorities Act, 1987, which came into force on November 9, 1995. The Act represents the primary legislative framework for organizing and delivering legal services to eligible persons across the country. It establishes a comprehensive institutional structure from the national level down to the district level for providing free and competent legal services.<sup>23</sup>

The Act's Preamble explicitly states its objective:

*“to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.”*

Section 12 of the Act specifies the categories of persons entitled to legal services. These include women and children, members of Scheduled Castes or Scheduled Tribes, industrial workmen, persons with disabilities, persons in custody, persons whose annual income does not exceed prescribed limits, victims of mass disasters, violence, floods, drought, earthquake, or industrial disasters, and such other persons as the Central or State Government may prescribe.<sup>24</sup>

The Act provides for legal services in all types of cases, whether civil or criminal, before any court, tribunal, or authority. Section 13 defines “*legal service*” to include rendering of any service in the conduct of any case or other legal proceeding before any court or tribunal or authority, giving advice on any legal matter, and any other form of legal service as prescribed.<sup>25</sup>

A distinctive feature of the Act is the provision for Lok Adalats (*People's Courts*) under Section 19. Lok Adalats are informal dispute resolution forums where cases pending in courts or at pre-

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<sup>23</sup> The Legal Services Authorities Act, 1987; Available at <https://legislative.gov.in> last seen on November 18, 2025.

<sup>24</sup> The Legal Services Authorities Act, 1987, Section 12.

<sup>25</sup> The Legal Services Authorities Act, 1987, Section 13.

litigation stage are settled through conciliation and compromise. Awards made by Lok Adalats have the status of a decree of a civil court and are final and binding on all parties.<sup>26</sup> The Lok Adalat system has become one of the most successful alternative dispute resolution mechanisms in India, disposing of millions of cases annually.<sup>27</sup>

The Act also mandates legal awareness programs to be conducted by legal services authorities to reach out to marginalized communities and inform them about their legal rights and the availability of legal aid services. Section 15 specifically requires legal services authorities to organize legal aid camps, legal awareness camps, and legal literacy programs.<sup>28</sup>

Despite its comprehensive framework, the Act has certain limitations. The income ceiling for eligibility is often too restrictive, excluding many persons who genuinely cannot afford legal services. The Act primarily focuses on provision of lawyers but does not adequately address other costs of litigation such as court fees, travel expenses, and expenses for procuring documents. Moreover, the Act does not provide for meaningful participation of civil society organizations in legal aid delivery, thereby limiting the diversity of service providers.<sup>29</sup>

### ***National Legal Services Authority (NALSA)***

The Legal Services Authorities Act, 1987 establishes the National Legal Services Authority (NALSA) as the apex body to lay down policies and principles for making legal services available under the provisions of the Act and to frame schemes for effective implementation. The Act provides for constitution of NALSA by the Central Government and vests it with regulatory and supervisory powers over the entire legal aid delivery system in the country.<sup>30</sup>

NALSA is headed by the Chief Justice of India as its Patron-in-Chief, with a serving or retired Judge of the Supreme Court as its Executive Chairman. The Authority includes several other members including the Chairman of the Bar Council of India, a senior law officer nominated by the Central Government, and eminent persons in the field of social service. This composition

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<sup>26</sup> The Legal Services Authorities Act, 1987, Section 19.

<sup>27</sup> National Legal Services Authority, Statistics on Lok Adalats 2024; Available at <https://nalsa.gov.in/lok-adalat-statistics> last seen on November 2, 2025.

<sup>28</sup> The Legal Services Authorities Act, 1987, Section 15.

<sup>29</sup> Manoj Mate, *The Origins of Due Process in India*, Berkeley Journal of International Law, Vol. 28, 2010, p. 216.

<sup>30</sup> The Legal Services Authorities Act, 1987, Section 3

is designed to ensure judicial leadership while incorporating diverse perspectives.<sup>31</sup>

The functions of NALSA, as enumerated in Section 6 of the Act, are comprehensive. These include laying down policies and principles for making legal services available, framing schemes for legal services, monitoring and evaluating implementation of legal aid schemes, taking measures to improve the working of Lok Adalats, organizing legal aid camps and legal awareness programs, and undertaking research in the field of legal services.<sup>32</sup>

NALSA has issued numerous regulations, guidelines, and schemes to operationalize legal aid delivery. These include regulations for panel lawyers, guidelines for client-lawyer interaction, schemes for legal aid in specific areas such as women and child-related cases, and monitoring mechanisms. The Authority has also developed innovative schemes such as the Victim Compensation Scheme and special provisions for legal aid to persons with mental illness.<sup>33</sup>

One of NALSA's significant contributions has been developing a framework for monitoring and evaluation of legal aid services. It has mandated submission of periodic reports by State Legal Services Authorities and conducts regular review meetings. NALSA has also initiated the use of technology for better service delivery, including online application for legal aid and digital case management systems.<sup>34</sup>

However, NALSA's effectiveness has been constrained by several factors. The Authority does not have dedicated staff and largely depends on the Supreme Court's administrative infrastructure. Its financial resources are limited, with budgetary allocation being inadequate for the magnitude of work required. NALSA's regulatory powers over State Legal Services Authorities are limited, making enforcement of standards difficult across states with varying levels of commitment to legal aid.<sup>35</sup>

## IMPLEMENTATION CHALLENGES

Despite the constitutional mandate, legislative framework, and institutional infrastructure, the legal aid system in India faces formidable implementation challenges that prevent it from

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<sup>31</sup> The Legal Services Authorities Act, 1987, Section 3(2) and (3).

<sup>32</sup> The Legal Services Authorities Act, 1987, Section 6.

<sup>33</sup> National Legal Services Authority, NALSA Regulations 2018; Available at <https://nalsa.gov.in/regulations> last seen on November 18, 2025.

<sup>34</sup> National Legal Services Authority, Guidelines for Monitoring 2021; Available at <https://nalsa.gov.in/guidelines> last seen on November 25, 2025.

<sup>35</sup> Jayna Kothari, *The Right to Legal Aid*, Journal of the Indian Law Institute, Vol. 51, 2009, p. 231.

realizing its potential. These challenges are multifaceted, ranging from resource constraints to quality concerns, from awareness deficits to structural inefficiencies.

### ***Financial Constraints and Inadequate Funding***

Financial constraints constitute the most fundamental challenge facing the legal aid system in India. The budgetary allocation for legal aid at both central and state levels remains woefully inadequate relative to the magnitude of need.<sup>36</sup> The remuneration paid to legal aid lawyers is particularly problematic, with rates prescribed by most State Legal Services Authorities being significantly lower than market rates for legal services, making it difficult to attract competent and experienced lawyers.<sup>37</sup> Infrastructure development for legal aid delivery suffers from chronic underfunding, with many District Legal Services Authorities lacking proper office spaces, adequate staff, or basic amenities.<sup>38</sup> Technology adoption, which could significantly improve efficiency and reach of legal aid services, remains limited due to budgetary constraints.<sup>39</sup>

### ***Quality of Legal Representation***

The quality of legal representation provided under legal aid schemes has been a persistent concern and perhaps the most serious indictment of the system. Empirical studies and judicial observations consistently highlight that legal aid cases often receive perfunctory attention, with inadequate preparation, limited client interaction, and poor courtroom performance.<sup>40</sup> The root cause of quality problems lies in the structure of panel advocates system, where low remuneration fails to attract competent practitioners with established practices. Panel lawyers often handle an excessive number of legal aid cases simultaneously due to low per-case remuneration, resulting in inadequate time for case preparation and limited interaction with clients.<sup>41</sup> The monitoring and accountability mechanisms for panel lawyers remain weak, with

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<sup>36</sup> National Legal Services Authority, Budget Analysis 2024; Available at <https://nalsa.gov.in/reports> last seen on November 1, 2025.

<sup>37</sup> Navdeep Singh, 'Panel Lawyers and Quality of Legal Aid', Journal of Criminal Law, Vol. 34, 2019, p. 156. Government of India, Report of Committee on Legal Aid, 2020, p. 89; Available at <https://doj.gov.in/reports> last seen on November 12, 2025.

<sup>38</sup> National Legal Services Authority, Technology Initiatives Report 2023-24; Available at <https://nalsa.gov.in/technology> last seen on September 5, 2025.

<sup>39</sup> Upendra Baxi, 'Taking Suffering Seriously', Third World Legal Studies, Vol. 4, 1985, p. 107.

<sup>40</sup> National Law School Study on Legal Aid in Karnataka, 2022, p. 67; Available at <https://nls.ac.in/research> last seen on November 8, 2025.

<sup>41</sup> National Legal Services Authority, Monitoring Manual 2021, p. 23; Available at <https://nalsa.gov.in/manuals> last seen on November 15, 2025.

provisions for evaluation and removal rarely enforced.

### ***Awareness and Accessibility Issues***

A fundamental challenge to effective legal aid delivery is the widespread lack of awareness among eligible beneficiaries about their right to free legal aid and the procedures for accessing these services.<sup>42</sup> Despite decades of the legal aid system's existence, numerous studies reveal that large sections of the population, particularly in rural areas and among marginalized communities, remain unaware of the availability of free legal services.<sup>43</sup> Geographical accessibility poses another significant barrier, with District Legal Services Authorities typically located in district headquarters, requiring rural residents to travel considerable distances<sup>44</sup>. For persons with disabilities, accessibility challenges are even more acute, with most legal services authority offices lacking disability-friendly infrastructure.<sup>45</sup> Procedural barriers further compound accessibility challenges, as obtaining legal aid typically requires submission of various documents that poor persons find difficult to procure.

## **JUDICIAL ACTIVISM AND EXPANSION OF LEGAL AID**

While implementation of legal aid through legislative and administrative mechanisms has faced numerous challenges, the Indian judiciary, particularly the Supreme Court, has played a transformative and proactive role in interpreting, expanding, and enforcing the right to legal aid. Through innovative jurisprudence spanning several decades, courts have not only breathed life into Article 39A but have fundamentally reconceptualized legal aid from a directive principle to an enforceable fundamental right integral to fair procedure under Article 21.<sup>46</sup>

### ***Hussainara Khatoon and the Rights of Undertrials***

The landmark case of *Hussainara Khatoon v. State of Bihar*<sup>47</sup> (1979) marked a watershed moment in the evolution of legal aid jurisprudence in India. This series of cases arose from letters written to the Supreme Court highlighting the plight of thousands of undertrials

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<sup>42</sup> Centre for Social Justice, *Legal Awareness in Rural India*, 2023, p. 45; Available at <https://centreforsocialjustice.net> last seen on November 12, 2025.

<sup>43</sup> National Legal Services Authority, *Legal Awareness Guidelines 2020*; Available at <https://nalsa.gov.in/awareness> last seen on November 3, 2025.

<sup>44</sup> *Rural Litigation Centre v. State of U.P.*, (1985) 2 SCC 431.

<sup>45</sup> Rights of Persons with Disabilities Act, 2016, Section 13.

<sup>46</sup> Reetika Khara, *'The Paradox of Documentation'*, *Economic and Political Weekly*, Vol. 52, 2017, p. 67.

<sup>47</sup> *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.

languishing in Bihar jails for periods exceeding the maximum punishment for the offenses they were accused of, without having received any legal assistance or even being produced before courts.

Justice P.N. Bhagwati, writing for the Court, delivered a revolutionary judgment that fundamentally transformed the understanding of legal aid as a constitutional right. The Court held that the right to free legal aid at state cost is an essential ingredient of reasonable, fair, and just procedure guaranteed under Article 21. The judgment observed that this right flows not merely from Article 39A but is implicit in the requirement of fair procedure under Article 21.

The Court emphasized that Article 21 enshrines a fundamental right and its denial would be unconstitutional, unlike Article 39A which is a directive principle. By locating the right to legal aid within Article 21, the Court made it judicially enforceable and not dependent on state's discretionary implementation. This interpretive innovation elevated legal aid from a non-justiciable policy directive to a fundamental right that courts could enforce against state inaction.

Justice Bhagwati's judgment contained powerful observations on the relationship between poverty and criminal justice system. The Court noted that "The poor who constitute the bulk of the accused are isolated and helpless and the Society ought to provide them with legal services at its cost in order to fulfil the constitutional pledge contained in Articles 14 and 21." The judgment recognized that without legal assistance, poor accused persons could not effectively assert their constitutional rights, rendering formal legal protections meaningless.

The Hussainara Khatoon case resulted in immediate remedial action. The Supreme Court directed Bihar State Legal Aid Committee to provide legal aid to all undertrials in Bihar jails and to ensure their speedy trial or release. Following the Court's intervention, thousands of undertrials were released, many of whom had been in custody for years for minor offenses without trial. This demonstrated the potential of judicial intervention to address systemic failures in legal aid delivery.

The case established several important principles that continue to guide legal aid jurisprudence. First, that the right to legal aid is available not only at trial but from the earliest stage when an accused is produced before a magistrate. Second, that the state's obligation to provide legal aid is not conditional upon the accused's request but is an affirmative duty that must be discharged

*suo motu*. Third, that denial of legal aid vitiates the trial and can be grounds for quashing conviction. Fourth, that legal aid must be effective and not merely nominal, requiring assignment of competent lawyers and adequate preparation.

### ***Supreme Court Legal Aid Committee Cases***

Building upon the foundation laid in *Hussainara Khatoon*, the Supreme Court in a series of subsequent cases further elaborated the content and scope of the right to legal aid. A particularly significant development was the case of *Khatri v. State of Bihar*<sup>48</sup> (1981), which arose from the brutal blinding of undertrials by police in Bhagalpur, Bihar. This case expanded legal aid rights and clarified state's obligations in criminal cases.

In *Khatri*, the Court held that even if an accused does not ask for legal representation due to poverty, illiteracy, or ignorance, the state must provide legal assistance if circumstances of the case and needs of justice so require. The Court emphasized that the right to legal aid at state expense is available not only to accused in session trials but also in other cases where needs of justice so demand, including pre-trial proceedings and appellate stages.

The judgment addressed the quality dimension of legal aid, holding that mere appearance of a lawyer is insufficient to discharge the state's obligation. The Court observed: "*It is the quality and not the quantity of legal services that is important. The lawyer provided by the State must be a reasonably competent lawyer who can afford adequate representation to the accused.*" This emphasis on quality remains a benchmark, though its implementation continues to be challenging.

In *Suk Das v. Union Territory of Arunachal Pradesh*<sup>49</sup> (1986), the Supreme Court expanded legal aid obligations to cases punishable with life imprisonment. The Court held that in all cases where an accused is charged with an offense punishable with life imprisonment or death and the accused is too poor to afford a lawyer, it is the constitutional obligation of the state to provide legal aid unless the accused refuses it.

## **COMPARATIVE ANALYSIS WITH INTERNATIONAL MODELS**

Examining international models of legal aid delivery provides valuable insights for reforming

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<sup>48</sup> *Khatri v. State of Bihar*, (1981) 1 SCC 627.

<sup>49</sup> *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.

India's system. Different countries have adopted diverse approaches to organizing and funding legal aid, each with its strengths and limitations. The United Kingdom operates a comprehensive legal aid system through the Legal Aid Agency, emphasizing quality assurance through contracting mechanisms.<sup>50</sup> The United States employs multiple models including public defender systems for criminal cases and legal services corporations for civil matters.<sup>51</sup> South Africa's Constitution explicitly recognizes the right to legal representation at state expense, with Legal Aid South Africa providing services through a mix of employed lawyers and private practitioners, emphasizing community-based paralegals.<sup>52</sup> Australia's Legal Aid Commissions operate as independent statutory authorities providing both casework and community legal education, emphasizing strategic use of resources through prioritization frameworks.<sup>53</sup> These international experiences provide valuable reference points for designing reforms that are evidence-based and informed by global best practices while remaining contextually appropriate to India's unique circumstances.<sup>54</sup>

## RECOMMENDATIONS FOR REFORM

Based on the analysis of constitutional framework, implementation challenges, judicial jurisprudence, and comparative perspectives, several reforms are necessary to strengthen India's legal aid system and realize the constitutional vision of Article 39A.

- 1. Substantial Increase in Financial Allocation:** The most fundamental reform is significantly enhancing budgetary allocation for legal aid at central and state levels. Legal aid spending should be treated as essential infrastructure investment for justice delivery, not discretionary expenditure. A dedicated cess on certain transactions or a percentage of court fees could provide stable funding independent of general budgetary constraints.<sup>55</sup>

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<sup>50</sup> Legal Aid Agency UK, Annual Report 2023-24; Available at <https://www.gov.uk/legalaid> last seen on November 18, 2025.

<sup>51</sup> American Bar Association, Legal Aid Report 2023; Available at <https://www.americanbar.org/legalaid> last seen on November 8, 2025.

<sup>52</sup> Legal Aid South Africa, Annual Report 2022-23; Available at <https://www.legal-aid.co.za> last seen on November 12, 2025.

<sup>53</sup> National Legal Aid Secretariat Australia, Annual Report 2023; Available at <https://www.ag.gov.au/legalaid> last seen on November 30, 2025.

<sup>54</sup> Hazel Genn, *Judging Civil Justice*, Cambridge University Press, 2010, p. 189.

<sup>55</sup> National Legal Services Authority, Budgetary Framework 2025-26; Available at <https://nalsa.gov.in/budget> last seen on November 3, 2025.

2. **Revised Remuneration Structure:** Lawyer remuneration rates must be substantially increased to attract competent practitioners and enable quality representation. Remuneration should vary based on case complexity, experience of lawyer, and time spent. Performance-based incentives could reward quality representation.
3. **Establishment of Public Defender System:** A hybrid model combining panel lawyers with full-time public defenders could improve quality and continuity. Public defender offices employing salaried lawyers dedicated to indigent defense would ensure specialization and reduce excessive caseloads.<sup>56</sup>
4. **Comprehensive Quality Assurance Framework:** Systematic mechanisms for monitoring quality of legal representation must be established, including client feedback systems, peer review processes, judicial evaluation, and periodic quality audits. Panel lawyers should undergo mandatory training programs.<sup>57</sup>
5. **Expansion of Eligibility Criteria:** Income ceiling for legal aid eligibility should be substantially raised and indexed to inflation. Eligibility assessment should consider family circumstances and nature of legal problem rather than rigid income cutoffs.<sup>58</sup>
6. **Strengthening Rural Coverage:** Establishing functional legal aid clinics in taluk headquarters and block levels is essential for rural access. Mobile legal aid clinics could serve remote and tribal areas. Technology-enabled services including tele-law should be expanded.
7. **Enhanced Legal Awareness Programs:** Massive expansion of legal awareness and literacy programs using diverse media and local languages is necessary. Collaboration with educational institutions, panchayats, and community organizations can extend reach.
8. **Specialized Services for Vulnerable Groups:** Dedicated legal aid cells for women, children, persons with disabilities, elderly persons, and transgender persons should be

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<sup>56</sup> National Institute of Public Finance, *Study on Public Defenders*, 2022, p. 78; Available at <https://www.nipfp.org.in> last seen on November 5, 2025.

<sup>57</sup> Law Commission of India, Report No. 277, 2019, p. 156; Available at <https://lawcommissionofindia.nic.in> last seen on November 28, 2025.

<sup>58</sup> Ministry of Rural Development, *Guidelines for Legal Aid*, 2023; Available at <https://rural.nic.in/guidelines> last seen on November 22, 2025.

established with trained lawyers and support staff.

9. **Procedural Simplification:** Application procedures for legal aid should be simplified with minimal documentation requirements and provision for self-certification. Processing time should be statutorily limited to ensure timely assignment of lawyers.<sup>59</sup>
10. **Technology Integration:** Comprehensive use of technology for case management, lawyer assignment, performance monitoring, and service delivery should be implemented. Mobile applications for legal aid access and online legal advice platforms would improve accessibility.<sup>60</sup>

## CONCLUSION

Article 39A of the Constitution represents a solemn constitutional commitment that access to justice shall not remain the privilege of the economically advantaged but shall be available to all citizens regardless of their financial or social circumstances. This commitment, inserted into the Constitution through the 42nd Amendment in 1976, recognized that formal legal equality is meaningless without substantive mechanisms to enable the poor and marginalized to vindicate their rights through the legal system.

Nearly five decades after Article 39A's insertion and over three decades since enactment of the Legal Services Authorities Act, 1987, the promise of universal legal aid remains substantially unfulfilled. While an institutional framework exists from national to district levels, its functioning is constrained by inadequate funding, quality deficits, limited awareness, structural inefficiencies, and urban-rural disparities.

However, the narrative of legal aid in India is not merely one of unfulfilled promise. The transformative role of judicial activism, particularly by the Supreme Court, has been instrumental in preventing complete stagnation of the legal aid system. Through innovative jurisprudence spanning several decades, courts have not only interpreted Article 39A expansively but have fundamentally reconceptualized legal aid as an integral component of the

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<sup>59</sup> National Legal Services Authority, Standard Procedures 2023; Available at <https://nalsa.gov.in/sop> last seen on November 28, 2025.

<sup>60</sup> Supreme Court E-Committee, Technology Blueprint 2024; Available at <https://sci.gov.in/ecommittee> last seen on November 15, 2025.

right to life and liberty under Article 21, making it an enforceable fundamental right rather than merely a directive principle.

Landmark judgments such as *Hussainara Khatoon*, *Khatri v. State of Bihar*, *M.H. Hoskot*, and numerous subsequent cases have established that legal aid is not state charity but constitutional entitlement, that it must be provided from the earliest stage of legal proceedings through appeals, that quality of representation matters and not merely formal appointment of lawyers, and that the state's obligation extends beyond criminal cases to civil matters involving fundamental rights.

Yet judicial activism alone cannot bridge the implementation gap. The legal aid system requires comprehensive reforms addressing its financial, institutional, operational, and policy dimensions. Substantial increase in budgetary allocation, revised remuneration structures, establishment of public defender systems, quality assurance mechanisms, expanded eligibility criteria, enhanced rural outreach, simplified procedures, specialized services for vulnerable groups, technology integration, and professional management are all necessary.

The challenge of implementing Article 39A effectively is ultimately a question of national priorities. Access to justice is fundamental to any democratic society claiming to be governed by rule of law. When substantial sections of the population are effectively excluded from the legal system due to economic or social disadvantages, the legitimacy of the legal order itself is questionable. Legal aid is not peripheral welfare expenditure but essential infrastructure for a functioning democracy and constitutional governance.

As India aspires to developed nation status and takes pride in its constitutional democracy, the gap between constitutional promise and ground reality in legal aid must be addressed with urgency. The judiciary has done its part in interpreting the Constitution expansively and pushing reluctant governments to act. Now it is for the political executive and legislature to match judicial vision with adequate resources, political will, and sustained commitment.

Article 39A's vision of a legal system that promotes justice on basis of equal opportunity, where no citizen is denied access to justice due to economic or other disabilities, remains a work in progress. Realizing this vision requires moving from rhetoric to action, from token compliance to substantive implementation, from viewing legal aid as charity to recognizing it as constitutional entitlement. Only then will the promise of equal justice under law become reality

for all Indians.

The journey from constitutional mandate to effective implementation is long and challenging, but it is a journey that Indian democracy must undertake if it is to fulfil its foundational commitment to justice, equality, and human dignity. As Justice Krishna Iyer eloquently stated, *“Access to justice is the essential part of human right to justice. Access to law is access to justice and access to justice is access to judges. Where these three limbs are lame, justice gets paralyzed.”* Ensuring that all three limbs are strengthened through effective legal aid is not optional but constitutionally mandated and morally imperative.