
THE PARADOX OF ACCESS: A CRITICAL EVALUATION OF THE QUALITY OF FREE LEGAL AID IN INDIA

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ABSTRACT

Access to justice is one of the pillars of the rule of law and constitutional governance. The constitutional provisions in India for free legal aid as enshrined in Article 14, 21 and 39A of the Constitution, coupled with the Legal Services Authorities Act, 1987, have failed to deliver the legal aid services effectively due to huge institutional and structural weaknesses. The article is a critical analysis to question the effectiveness of the legal aid system in India in providing access to justice or simply formal access to the law. Using a doctrinal research approach, the study examines the constitutional provisions, acts and statutory provisions, judicial decisions, Law Commission Reports and legal scholarship of the time to analyse the qualitative aspects of legal aid. The article contends that the problem is not the absence of legal aid providers but the poor quality of representation, low compensation for legal aid lawyers, the lack of public knowledge of legal aid services, digital exclusion, and institutional inefficiencies which hinder equal justice promised by the constitution. It also examines the National Juridicare model as a paradigm of rethinking law and law help from a social justice perspective instead of welfare perspective. The article draws lessons from the experience of the legal aid systems of the United Kingdom, Australia and South Africa and suggests potential reforms to enhance institutional capacity, quality assurance and professional accountability. It will draw conclusions that access to justice is not a quantitative process and legal aid must move from measures of quantity to quality to achieve meaning and to realize the constitutional vision of substantive equality and social justice.

Introduction

Poverty in India cannot be perceived only as an economic situation that denotes the absence of income or material possession¹. Instead, it is a socio-legal fact that lies deep within a person that influences the dignity, autonomy, and capacity of an individual to claim his or her fundamental rights. The poverty spans much further than mere economic poverty; it is regularly characterized by social exclusion, power, and a reduced ability to take part in legal and political establishments in a meaningful manner². In these cultures of inequality and established social orders, the poor often find the legal system remote, unreachable and only accountable to the affluent, as well as those with any kind of economic and social power. Thus, the idea of equality before the law is, in most cases, a far-fetched prospect of the marginalized population who does not have the resources or awareness to assert legal rights. Poverty remains constant in India because structural inequalities that influence access to opportunities and resources have long existed in India. The allocation of economic benefits and social mobility remains dependent on traditional social stratifications, especially caste, class and gender-based ones. Such disparities are also supported by historical and institutional legacies that have marginalized particular communities in a systematic manner.

An effective interaction with poverty as a legal matter must be done with a delicate insight on the various groups composing the poor population. In India, rural poverty occurs mostly among landless agricultural workers, marginal farmers and artisan workers whose lives rely on unpredictable agricultural markets and seasonal labour markets³. The second type is urban poverty that is defined by a high number of individuals who are involved in informal labour, or those who are domestic workers, street vendors, migrant labourers, and the unemployed. Such groups do not usually enjoy the benefits of a stable job, social security programs, and access to education. They are often exposed to exploitation and negligence by the institution, especially because their economic conditions are often precarious and complicated by little legal knowledge. In these bigger groups, women and children are some of the more vulnerable subgroups whose situation of poverty is determined by further layers of social disadvantage. Women have been faced with property ownership, employment and financial freedom challenges where they have been left economically vulnerable whenever widowed, divorced or

¹ Varsha Aithala & Karthik Suresh, *Reforming the Indian Bar: The Limits of Technological Solutions*, 6 Indian Pub. Pol'y Rev. 85 (2025).

² Aaradhya Mittal, *The Reality Behind Free Legal Aid*, 8 Int'l J. L. Mgmt. & Human. (2025).

³ Id.

abandoned. Equally, children born in poor families are often forced to work in dangerous jobs or other types of informal labour thus foregoing the benefit of an education and this leads to intergenerational poverty cycles⁴. These circumstances lead to the invisibility of the poor in formal legal procedures whereby they are presented much more as accused individuals than as rights-holding citizens trying to protect themselves. In this regard, legal assistance should be theorized as not just procedural support but a transformational tool that can help the marginalized communities to overcome the structural imbalances that make them unable to access justice.

The available literature on legal aid in India, while extensive, is largely concerned with the qualitative effectiveness of legal aid. While the subject of legal aid in India has been explored in legal scholarship, the existing literature tends to focus primarily on availability of legal aid services, and only marginally on their qualitative effectiveness. As a result, the debate has centered on the availability of legal aid, rather than focusing on the quality of legal representation that is offered, whether competent, independent, and able to help achieve meaningful justice for disadvantaged litigants. This is one of the most important yet unexposed problems of the legal aid system in India. This article therefore does not only discuss the statutory and constitutional framework, but also assesses the institutional quality of free legal assistance, the structural weaknesses in its functioning and the reform potential to strengthen the legal aid from a symbolic welfare to an effective instrument of constitutional justice⁵.

The Constitutional Command: Between Charity and Mandate.

The constitutional commitment to equality, justice and rule of law has a strong foundation in the demand of legal aid in India. The Constitution envisages a legal system where justice is not based on one's economic background to access justice. Article 14 ensures equality before the law and equal protection of the laws, which is establishing the principle of equality before the laws of all people⁶. Nevertheless, formal equality is not sufficient to give meaning to justice in cases where economic barriers act as barriers to the approach to the courts or even access to qualified legal counsel. Understanding this limitation, the constitutional structure aims at making sure that economic helplessness does not abscond citizens of their right to claim legal

⁴ Ranbir Singh, Srikrishna Deva Rao, Priya Rai & Akash Singh eds., *Access To Legal Information & Research In The Digital Age* (Nat'l L. Univ. Delhi).

⁵ National Legal Services Authority, *Annual Report 2023–2024* (2024).

⁶ INDIA CONST. art. 14.

rights and protect their interest in the legal procedure⁷. The right to legal aid is also directly related to the right of personal liberty in Article 21 which states that no man shall be denied life or liberty without trial by a process prescribed by law⁸. The Supreme Court has through progressive judicial interpretation broadened the contents of this provision to encompass procedural fairness and the right of a legal counsel as an important part of a fair legal process. On the same note, Article 22(1) acknowledges the right of arrested person to attack and be defended by a legal practitioner of his or her choice⁹.

In *Suk Das v Union Territory of Arunachal Pradesh*¹⁰, the Supreme Court reiterated that the state has a duty to provide effective legal aid to an accused person who cannot afford it, and that the absence of legal aid taints the fairness of criminal trials. The Court also noted that it was the State's duty to provide free legal aid to an accused, and not await his request. Likewise, in *State of Maharashtra v Manubhai Pragaji Vashi*,¹¹ the Court established the interdependence between legal education and legal aid as a vital part of access to justice in the context of legal aid. *Mohd. Hussain @ Julfikar Ali v State (NCT of Delhi)*¹² restated that when effective legal representation is denied it is an attack on the very essence of a fair criminal process. While the constitution gives recognition to free legal aid as per Article 39A, there is uneven implementation in India¹³. That the right to equal justice means much more than the right to have a lawyer, it also means that you have timely and effective, competent legal support to protect your substantive rights. The meaning of the right to fair procedure of Article 21 has been repeatedly highlighted by the judiciary by stressing that judicial aid is inherent in such a guarantee. However, the lack of institutional capacity, underfunding and high variation in legal representation quality, as well as low public awareness, remain a challenge for the implementation of Article 39A to fulfil its transformative constitutional mandate¹⁴. Thus, the constitutional debate on the right to legal aid needs to move from a declarative to a practical level of assessing whether the current institutional context, as it is, really does provide equal access to justice.

⁷ Subhra Bakul Karmakar & Kavita Lama, *Legal Aid Service and Access to Justice with Special Reference to Pro Bono Culture Model: A New Dimension of Legal Education in India*, 7 Gap Interdisciplinaries (2024).

⁸ INDIA CONST. art. 21.

⁹ INDIA CONST. art. 22(1).

¹⁰ *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 S.C.C. 401.

¹¹ *State of Maharashtra v. Manubhai Pragati Vashi*, (1995) 5 S.C.C. 730.

¹² *Mohd. Hussain @ Julfikar Ali v. State (Gov't of NCT of Delhi)*, (2012) 9 S.C.C. 408.

¹³ Law Commission of India, *Fourteenth Report: Reform of Judicial Administration* (1958).

¹⁴ INDIA CONST. art. 39A.

Organizational Design: Legal Services Authorities Act, 1987.

Legal Services Authorities Act, 1987 was passed under the aim of not depriving any citizen of access to justice based on economic or other disabilities¹⁵. The Act is an important legislative attempt to give effect to the constitutional vision of Art. 39-A of the constitution which requires equal access to justice. It establishes a more decentralised but coordinated network where free legal aid could be facilitated to the disadvantaged population in all parts of the country, thus closing the divide that may otherwise exist between the legal system and the participation of disadvantaged communities in formal justice systems. The Act provides a hierarchical institutional framework that is intended to help in the successful implementation of the legal aid programmes on various levels of governance. On the national level, there exists, the highest body in the form of the National Legal Services Authority (NALSA), which sets policies, principles and schemes of legal services. State Legal Services Authorities (SLSA) at the state level apply these policies and adjust them to the local requirements¹⁶. The Legal Services Authorities Act, 1987, which provides for the structure of the authorities seems to be all-encompassing, but its impact is very much limited by administrative capacity and financial commitment at State and district levels¹⁷. There are significant variations between the States in terms of infrastructure, legal aid lawyers trained to provide services, monitoring, and outreach programmes. As a result, judicial assistance is often available only on a geographic basis and not due to constitutional rights. Also, the lack of a common quality control and effective performance measurement system has created doubts in the public's mind about the legal aid system, and hampered the goal of equal access to justice that the constitution sets forth. District legal services authorities and Taluk legal services committees, which serve as the main points of contact to the masses, support them. Furthermore, the role of Para-Legal Volunteers (PLVs) is instrumental in this decentralized structure, acting as the bridge between the formal authorities and the most remote inhabitants, such as isolated fishing communities along the coast¹⁸. The decentralised institutional set up makes legal services available to even distant and rural populations, which reinforces access to the grassroots level of access to justice.

One of the important provisions of the Act is Section 12, which outlines the types of individuals

¹⁵ Legal Services Authorities Act, No. 39 of 1987 (India); Hrishikesh Jaiswal, *Good Quality Free Legal Aid in India: A Distant Dream*, 7 Int'l J. Res. & Analytical Rev. (2020).

¹⁶ Marc Galanter & Jayanth K. Krishnan, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*, 55 Hastings L.J. 789 (2004).

¹⁷ National Legal Services Authority, *Annual Report 2023–2024* (2024).

¹⁸ Id.

that are to be provided with free legal services. These consist of people who belong to the Scheduled Castes and Scheduled Tribes, people who are victims of trafficking or begging, women and children, people with disabilities or mental illness, victims of disasters or caste-based violence, industrial workmen, people who are in custody, and people whose earnings are below the stipulated amount¹⁹. Legal services are those services, which include not only court or tribunal representation, but legal advice and the help in drafting legal documents. One of the most remarkable aspects of the Act is the introduction of the Lok Adalat system commonly known as the People Courts which is an alternative dispute resolution system that is informal and inexpensive. Lok Adalats encourage peaceful resolutions by way of conciliation, and their rulings are final and binding and they can be enforced as decrees of civil courts without appeal.

Critical Analysis: Quality Crisis and Obstacles to Justice.

Regardless of the progressive legislative framework that has been set by the Legal Services Authorities Act, 1987, application of legal aid in India still encounters significant structural and institutional difficulties. The disjuncture between the legislative intent and the reality of operation has created a general worry among scholars and practitioners as to the efficacy of the legal aid system²⁰. In most cases, the legal aid mechanisms exist as mere proclamations of constitutional commitment as opposed to the fact that they can be effective tools that can meet the legal demands of the marginalized populations. Consequently, equal justice is often not fulfilled to the most economically and socially disadvantaged. Among the most urgent issues, there is the quality of the available legal representation of the beneficiaries of legal aid programmes.

The problem of quality in the legal aid system in India is not just one of insufficient funds, and is a structural problem rather. Legal aid representation is generally seen as a not very rewarding legal practice, because of the lower scale of remuneration, career advancement and institutional recognition²¹. As a result, good advocates often opt for private suits and corporate practice rather than legal aid work. This imbalance leads to a disempowerment of economically disadvantaged litigants who are represented by relatively less experienced litigators, who may have a high caseload and limited institutional support. The sense of the inequality is especially

¹⁹ Jaiswal, *supra* note 15

²⁰ Anup Surendranath, *Access to Justice in India: Challenges and Opportunities*, Nat'l L. Sch. India Rev. (2012).

²¹ Law Commission of India, *One Hundred Thirty-First Report on the Role of the Legal Profession in the Administration of Justice* (1988).

stark when the poorest person is pitted against the wealthiest of the government or corporate body and will be defended by senior counsel with very deep pockets. These inequalities pose constitutional issues about substantive equality before the law, since, unless substantive representation is at a reasonable standard of professional competence, formal legal representation will not afford individuals meaningful access to justice. One of the main defects of the present legal aid system is its undue focus on formal representation and not on effective representation²². But mere appointment of counsel is not enough to meet constitutional standards if the counsel is "perfunctory or ineffective. Competent, diligent and capable legal assistance which ensures enforcement of substantive rights throughout the judicial process is a precondition for meaningful access to justice. Thus, assessing legal aid on a per-number basis only could undermine the constitutional right to legal aid to an administrative formality.

The issue of underrepresentation is also interconnected with the question of low payment of the legal aid lawyers. Legal aid empanelled advocates are frequently given a small honorarium which does not sufficiently reflect the amount of time and effort which needs to be invested into the process of being a good litigator²³. These financial limitations are a deterrent to good lawyers to be associated with the legal aid programmes in a long-term basis. This has over time created structural disincentive which compromises quality of services offered by legal aid institutions. The resulting imbalance is especially noticeable when poor litigants have to face opposition by larger corporations or government agencies that have much more financial resources, institutional backing, and access to specialised legal expertise. Lack of legal awareness among the marginalized communities is another serious impediment towards the proper operation of the legal aid. In most of the rural areas and economically underprivileged areas, people are not aware of their basic rights and the processes that can be used to implement these rights. The fact that a number of individuals are illiterate, socio- economically marginalized, and exposed to the law through minimal exposure all lead to this ignorance. Even with the simplest form of literacy, the individuals are not in most cases aware of the legal solutions that they can have and the steps that they need to take in order to pursue justice.

The Judiciary in India is increasingly getting digitised and has posed a paradox in the access to justice system²⁴. Virtual courts, e-filing platforms and online legal services have been a boon to the administration, but also have ushered in new forms of exclusion for the economically

²² Mauro Cappelletti & Bryant Garth, *Access to Justice*, 27 BUFF. L. REV. 181 (1978).

²³ *Id.*

²⁴ United Nations Development Programme, *Digital Strategy 2022–2025* (2022).

weaker sections. These factors of digital illiteracy, poor internet connectivity, language barriers and limited access to electronic devices collectively limits vulnerable communities from using technology for legal services. This means that technologies and innovations, if developed without a corresponding inclusive and digital-literacy training programme and supported legal services centres, could contribute to the reproduction of inequalities and reinforce them. Besides informational barriers, some regulatory frameworks contribute to the marginalisation of poor people, albeit not intentionally. Both municipal and state governments have had to develop laws and regulations that make illegal acts committed as a result of abject poverty. Such activities like begging, sleeping in the open, or street vending without a gray market permit are usually perceived as crimes by local regulatory agencies²⁵. They are often broadly and vaguely written down giving much discretionary authority to enforcers. This means that the poor societal members are prone to harassment, detention, and even fines even when they have very limited ability to counter these acts in the courts. There are still psychological and socio-economic barriers that are discouraging the economically disadvantaged individuals to seek legal redress, despite the apparent availability of legal aid services. The people who live in a precarious economic situation are often afraid of being retaliated against by their employers, landlords or the local governments in case they attempt to exercise their rights under the law. The indirect expenses that come with litigation including the opportunity cost of wages, travel expenses, and the lengthy litigation process all discourage them to deal with the courts of law²⁶. Therefore, many of the victims of injustice choose not to be heard but instead suffer more economically. This scenario highlights the need to have a more active, community-based system of legal-aid that not only provides representation, but also empowers the disadvantaged groups to pursue justice as per the constitutional democracy.

Strategic Reform: The "National Juridicare" Vision.

The remedial action of addressing the structural shortfalls of the legal-aid system implies the adoption of a radical policy approach that is based on the philosophy of the vision called National Juridicare²⁷. This paradigm holds that the objective of the legal services must go beyond the alleviation of poverty and should also aim at the elimination of the same. In other

²⁵ Ajeet Singh Baghel, Right to Free Legal Aid – A Step Towards Equal Justice to Citizens, in Contemporary Issues And Recent Advances In Management, Commerce, Economics, Arts, Law And Humanities (Sourabh Jain, Ashok Kumar Gupta & Ajay Jain eds., Edu Academic Incorporation 2021).

²⁶ Surya Deva, *Public Interest Litigation in India: A Critical Review*, Civ. Just. Q. (2009).

²⁷ Law Commission of India, *One Hundred Thirty-First Report on the Role of the Legal Profession in the Administration of Justice* (1988).

words, criminal justice should go beyond the simple role of helping individual litigants and address the underlying social and economic institutions that maintain marginalisation. The Juridicare view is not that poverty is a particular individual misfortune; rather, it is the result of the institutional structure that is systematically disadvantageous to specific groups of people²⁸. To this end, the legal services should assume a proactive position to address these structural injustices by promoting social justice and protecting marginalized groups of people. An embodied vision such as this requires that legal -services programmes be focused upon a sequence of interdependent strategic elements.

Legal assistance should be part of poverty eradication in which the structural injustices facing disadvantaged groups would be resolved collectively. It must stimulate institutional change by adopting a group-based approach to representation, which provides law on behalf of so-called groups of social and economic protest whose grievances reflect larger types of social injustice. The legal-aid system should give priority on empowerment where the poor are made to overcome the sense of helplessness through knowledge, collective organisation and mobilisation of the law²⁹. The philosophy considers law as the tool of social change that calls lawyers to make a critical evaluation of legal norms when they demonstrate an unjust social order. The strategy emphasises a multifaceted view that poverty has social, economic, psychological aspects which are interconnected and cannot be addressed using single legal actions to deal with the whole issue. What is also of significance is the need to improve the professional quality of the legal services provided through the legal-aid system. Effective legal support is not achievable without inculcating an ethically controlled subject of professionalism in the functioning of the institutions of legal-aids. The very fact that the regulatory infrastructure was provided by the National Legal Services Authority Regulations 2010³⁰ already allows the quality and skilled advocates to be involved in terms of standard charges on the cases that involve the threat to life and personal freedom. For coastal and rural populations, this multifaceted approach must also recognize the intersection of poverty and environmental justice, where the loss of access to natural resources due to unregulated development is as much a legal injury as a violation of labor or property rights³¹. However, this model requires massive growth in order to ensure that the indigent litigants will not be left behind in any case when

²⁸ Id.

²⁹ Nitin Sharma & Santosh Kumar, *Constitutional Conventions: An Exploratory Study in the Light of Indian Constitution System*, 5 Indian J. Legal Rev. (2025).

³⁰ National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.

³¹ Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 Third World Legal Stud. 107 (1985).

they have to face well-endowed opponents. The legal-aid system could advance towards the higher goal of structural justice and real equality before the law by protecting high professional standards and competent representation. These campaigns must be tailored to specific local vulnerabilities, such as educating migrant workers in urban centers or traditional artisans in fragile ecosystems about their rights against institutional negligence and corporate exploitation.

Lessons may also be learned from other legal aid systems. The UK has a legal aid system grounded in institutions and designated to include eligibility criteria, quality assurance and ongoing monitoring of legal service providers³². In Australia for example, Legal Aid Commissions are a mixture of public sector and private practitioners, and receive government funding, and have independent oversight and community legal services³³; and in South Africa, the Legal Aid Board's full-time public defenders provide consistent representation³⁴. While each of these models is unique in its constitutional and socio-economic setting, they all show that the success of legal aid is not only dependent on statutory recognition but on a long-term commitment to investing in the system, holding professionals accountable and improving its quality. To achieve this, India could build on its current system of “commission on performance” by introducing new systems of remuneration, periodic quality audits and a systematic performance evaluation of lawyers in legal aid systems to make constitutional rights into “real rights.”

Access to courts and access to justice continue to be key to the current debate on legal aid. India has been able to establish a large and intricate statutory system backed by the constitutional provisions, but the efficiency of this system still relies on the quality of the institutions. While it is good that legal aid is a constitutional right, unless it becomes a professionally accountable, public service system that provides competent representation and moves away from the welfare mentality, the constitutional goal of equal justice will remain a distant dream. The success of legal aid should not be judged on the number of legal aid clinics that have been set up or the number of people signed up for legal aid, but on the ability of vulnerable people to get meaningful remedies through competent legal representation³⁵. The idea that quality is to be given a place in the vision of the Constitution under Articles 14, 21,

³² Roger Smith, *Justice: Reducing the Legal Aid Budget* (2019).

³³ Australian Government, *National Legal Assistance Partnership 2020–2025* (2020).

³⁴ Legal Aid South Africa, *Annual Report 2023–2024* (2024).

³⁵ Mauro Cappelletti & Bryant Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective*, 27 *Buff. L. Rev.* 181 (1978).

39A can only be half lived if there are no institutional changes to ensure it.

Conclusion

Legal assistance is far more than a charity given to the less privileged individuals; it is an essential human right which cannot be afforded to the proper operation of a democratic legal system³⁶. As the loss of legal representation due to economic or social inequality undermines the constitutional promise of equality and fairness, the unreasonable loss of liberty, property and even life is the ultimate outcome. When justice is viewed as fairness in the course of adjudication, then each person should be granted an equal chance to provide and defend his or her case with the assistance of a competent counsel. In order to make legal aid a really working tool of justice, a number of policy changes should be done. To begin with, the reform of remuneration is essential to attract effective lawyers to the field of legal-aid; the state governments should drastically increase the money-attracting interests to allow the legal-aid panels to recruit the best minds of the bar. Governments should focus on legal-literacy campaigns through legislation, i. e. they have to support the judiciary system and legal-services organisations in implementing awareness campaigns in the grassroots setting. These programmes are supposed to educate the citizens on the basic rights and mechanisms that they can use in enforcing their rights. The systems of legal aid should focus on professionalism in service provision to eliminate the aspect of legal poverty, which is the inability of individuals to utilize the law efficiently, on a systematic basis. Lastly, legal-aid programmes need long-term institutional backing to make them successful. The national, state and district Legal Services Authorities should be properly and consistently funded so that the free legal services are provided in an organized and uninterrupted manner. When such reforms are done in totality, the law system is able to move towards achieving its constitutional mandate of dispensing equal justice to the poor, the oppressed and other vulnerable parts of the society. Only under its long-term commitment can the constitutional commitment of justice, social, economic, and political, be made a living reality to all citizens.

³⁶ G.A. Res. 217 A (III), Universal Declaration of Human Rights art. 8 (Dec. 10, 1948).