



LEGAL AID IN INDIA: CURRENT SCENARIO AND FUTURE CHALLENGES

Yasho Jain

ABSTRACT

The paper is a detailed discussion of the legal aid system in India with the major emphasis on the situation in the present and the perspectives for further development. In light of the constitutional principles enshrined in Articles 38 and 39A of the Indian Constitution based on justice in the socio-economic political realms, the paper underscores the importance of attempts to stimulate the administration of justice to the poor and needy section of the society. The paper shall delve into this field by examining the periods before and after the introduction of Article 39A in the Indian constitution in 1976, and the introduction of Legal Services Authorities Act in 1987 that formulated rather a standard approach to legal aid programs.

Thus, the discussion highlights the need for legal aid to maintain public confidence in the judicial system as well as ensure equal justice for all members of society in the United States. The existing laws are underlined for extending efforts in order to narrow the gap between the legal services and the underprivileged, and promoting oral advocacy for pro bono and legal aid for the needy. The paper also focuses on the need to popularize the rights and possibilities available to the population, providing suggestions for the cooperation between local courts and legal clinics.

Notwithstanding the improvements which have been made in this area, the barriers which still remain include: lack of funding, few personnel, and lack of public awareness on this issue. The paper concludes that legal aid is to evolve and develop actively, citing the utilization of information technologies, specialized programs, and services, as well as novelties in the sphere of appropriate ADR. If such challenges are approached and the new strategies are adopted, India could work on improving the access to justice and ensure providing legal aid to all groups that need it.

KEYWORDS: Legal Aid, Public Confidence, Pro bono, Public Awareness, Constitution.

INTRODUCTION

The preamble of the Indian constitution articulates that the basic structure and goal of our country is to establish a social, economic and political justice for the citizens of India. The Constitution of India has some specific articles that deserve special attention – these are the Articles 38 and 39A. Article 39-A states that the government is under an affirmative duty to provide free legal aid, either through legislation or otherwise, because otherwise, citizens are not given an equal opportunity to litigate. Article 38 (1) states that regulating and promoting social order, that is justice, is the responsibility of the state with an intention of enhancing wellbeing that its residents. The Legal Assistance Authorities Act under which was passed in 1995 provides fair and make sure that rights of the people of India who are poor economically or socially, get their legal aid without any cost. The legislation has an aim of ensuring that everyone gets to have similar opportunities in accessing the legal aid of their choice by insisting that pro bono attorneys and advocates present themselves volunteering to represent and/or advise people who are financially incapable of paying for such services. It goes without question that the duty is quite arduous, which considerably limits its potential for reaching its maximum potential and simultaneously fails to afford destitute individuals the opportunity to acquire excellent legal representation.¹²

LEGAL AID IN INDIA

In order to promote and preserve the values of the legal system, thus enhancing the democratic kernel of the people's government, the matter is to provide equal access to justice for all people, especially for the poor, the voiceless, and the economically vulnerable. According to Article 14 of the Indian Constitution, the state has the obligation to guarantee equal treatment for all individuals under the law and provide them with a just and unbiased legal system. In 1976, the Indian Parliament incorporated Article 39A¹³ into the Indian Constitution, therefore enshrining the provision of free legal assistance as a fundamental entitlement. The notion gained formal support with the enactment of the Legal Services Authorities Act in 1987 and the subsequent founding of NALSA in 1995. It now serves as a beacon of hope for individuals who previously had none. The subsequent legislations have been enacted to bolster the facilitation of legal assistance: The text refers to the Indian Bar Council Legal Aid Rules, which were created in 1983 by the Bar Council of India. Additionally, the text refers to the Legislators (Safeguarding Client Interests, Encouraging the Rule of Law, and Control and Upkeep of Standards in Practice) Bill of 2010. Despite the application of these norms, legal aid services in India still fail to meet the necessary requirements. In the case of *Sheela Barse v. State of Maharashtra*¹⁴, it was determined that one of the essential obligations stated in articles 21 and 14 of the constitution, as well as article 39-A, is to offer legal aid to an indigent accused individual who is incarcerated and confronting capital punishment. In India, the term "legal help" refers to the provision of free legal services to individuals who are unable to afford the

¹² Mathews and Outton, *Legal Aid & Advice*, London, Butterworths, 1971 cited in Mamta Rao, *Public interest Litigation*, Eastern Book Company, 2010, p.340

¹³ Article 39A of the Indian constitution.

¹⁴ *Sheela Barse vs. State of Maharashtra*: MANU/SC/0437/1988

services of a lawyer or participate in court proceedings. The primary objective of legal assistance is to guarantee equitable access to justice for all individuals, irrespective of their financial circumstances. The following text contains crucial details regarding legal assistance in India. Constitutional authority Article 39A of the Indian Constitution ensures that every citizen has the unimpeded entitlement to receive legal assistance at no cost, regardless of their financial circumstances or any other limitations.¹⁵ The 1987 Law Services Authorities Act: Enacted in 1987, this legislation offers a structured framework for the provision of legal assistance in India. This legislation created the State Legal Services Authorities (SLSAs) and the National Legal Services Authority (NALSA) at the federal and state levels, respectively. Specifications: Individuals who experience economic disadvantage, females, minors, individuals belonging to marginalized communities, and other susceptible groups typically have the right to receive legal assistance. States may have varying criteria. Legal aid encompasses a range of services, such as document preparation, court representation, legal consultation, and other forms of legal support. The article encompasses several legal topics, including criminal trials, civil litigation, and family law. Legal Aid Clinics: Throughout the nation, legal aid clinics have been developed to provide affordable legal assistance. Typically, attorneys and paralegals are responsible for supervising these clinics.

HISTORY OF FREE LEGAL AID IN INDIA

According to the 1958 study by the Law Commission of India titled "Reform of Judicial Administration," the lack of legal representation for low-income petitioners is a significant issue rather than a minor procedural concern. In 1960, the government put limitations on initiatives aimed at offering legal assistance. Article 39-A was incorporated into the Constitution with the enactment of the Constitution (Forty-second Amendment) Act, 1976 in 1976. Hon. Justice P.N. Bhagwati chaired the Committee for Implementing Legal Aid Schemes, founded in 1980 to oversee and administer legal aid programs. The Legal Services Authorities Act was enacted in 1987 with the aim of establishing a standardized organizational structure and regulatory framework for legal assistance programs throughout the country. The National Legal Services Authority was established on December 5, 1995, as a legislative entity with the objective of establishing effective and affordable legal service programs, together with the necessary regulations and guidelines to ensure that legal assistance is delivered in accordance with the law.

CONSTITUTIONAL PROVISIONS RELATING TO LEGAL AID

India provides legal aid to majority of its population in accordance with the article 39A of the Indian constitution. It is for this reason that this essay seeks to postulate the ways in which the legal needs of all

¹⁵ C.H. Scott , Legal Aid Past and Present, A Brief Bleak Picture, pp. 4-5.cited in Mamta Rao, Public Interest Litigation, Eastern Book Company, 2010 p.341

people can be met fairly and without bias by the appropriate legal service providers or shelters, provided there are no financial restrictions or any other legal barriers that may hinder access to the kind of legal assistance required by such people. Here is the pertinent excerpt from the constitution: The Constitution of India by the Amendment Act of 1995 introduced the Article 39A which stipulates that the state should strive for establishing equality of opportunities in judicial processes and justice for all citizens. Thus, for all the mentioned cases, it is necessary to provide free legal aid to minimize people's opportunities to seek justice due to financial or other difficulties, which can be done due to proper legislation or other AI initiatives. This constitutional clause shows India's determination to affirm justice and offer free legal assistance to those, who cannot afford it or have lost their hope in it.¹⁶

This statement affirms that the right to have justice is one of the fundamental things which every person has a right to and it also stresses the need to ensure that there are no hurdles in-place which may prevent people from suing. The guidelines for implementing the Law were set up by the Indian government through Article 39A enacted as the Legislative Services Authorities statute of 1987. This statute makes the foundation on which the legal aid scheme in India would be premised on. This Act was meant to bring improvements in the speed of delivering of legal aid services and programs by both federal and state governments. Therefore the state legal skill authorities (SLSAs) and the national legal skill authority (NALSA) were created. Article 39A of the Indian Constitution outlines the structure of India's initiative that provides complimentary legal assistance to individuals. This statement emphasizes the need to ensure fair and unbiased access to the legal system, as well as the government's responsibility to eliminate any obstacles that may hinder individuals from seeking justice due to inadequate finances or other factors. What is the meaning of Article 39-A in the Indian Constitution? The right to a fair trial is a fundamental human right that is strongly linked to the right to legal representation. Article 39-A became effective after the enactment of the Constitution (Forty-second Amendment) Act of 1976. The State is granted the authority to establish suitable legislation and initiatives for pro bono legal assistance in accordance with the standards referred to as the "Directive Principles of State Policy." The main objective of this proposed amendment was to guarantee that no individual's ability to seek justice would be hindered by financial or other constraints.¹⁷

FREE LEGAL AID IN INDIA: THE POSITIVE CONTRIBUTION OF JUDICIARY

¹⁶ Upendra Baxi, Taking Suffering Seriously , Social Action Litigation in the Supreme Court of India", Law and Poverty; Upendra Baxi , Crisis of the Indian Legal System, Vikas Publishing Pvt Ltd, 1982, p.45

¹⁷ EJ Cohn, Legal Aid for the Poor, Law Quarterly Review(1990), Vol 49, p 256,cited in S Muralidhar, Law Poverty and Legal Aid, Lexis Nexis, Butterworths, 2004, p.7

In the *Hussainara Khatoon* case,¹⁸ the Indian Supreme Court had an opportunity to clearly express its strong support for the rights of destitute and marginalized citizens. The petitioner notified the court that most of the culprits involved in this case were already serving sentences that, if their convictions had been upheld, would have resulted in considerably lengthier lengths of incarceration. The main factor contributing to the delay in court proceedings was the parties' insufficient financial resources to hire legal counsel. In this particular instance, the court observed that Article 39-A emphasized the fundamental character of the guarantee expressed in Article 21, and that the provision of complimentary legal aid was a crucial element of a just, unbiased, and equitable process. In the *Khatri v. State of Bihar*¹⁹ case, the court analyzed the matter of granting free legal assistance to indigent defendants who are unable to afford legal counsel. According to the constitution, the state is required to provide aid not just during court hearings but also when individuals are first brought before the judge and occasionally even when they are held in custody. It was determined that the state could not deny this privilege due to the accused's lack of request, insufficient funds, or administrative inefficiency. Magistrates and session judges must inform the accused of their legal rights. The State is obligated to provide legal representation in cases when it is considered essential, and the eligibility of the accused person to obtain such representation depends on their specific circumstances. This is a mandatory requirement stipulated by the Constitution. To ensure a fair and equitable process for all those accused of crimes, it is essential to offer free legal assistance. It is crucial to understand that the guarantee of Article 21 indirectly confers this right. The State cannot avoid this obligation by stating its administrative or budgetary capacities to deal with the issue or by arguing that none of the affected detainees sought legal assistance. In the *Suk Das v. Union Territory of Arunachal Pradesh* case²⁰, Judge P.N. Bhagwati noted that a substantial proportion of rural Indians are uneducated and lack awareness of their legal rights. Moreover, he emphasized the significance of imparting education to the underprivileged population regarding the legal system, since a substantial portion of them are unaware of their rights, namely the entitlement to free legal aid. Even those with the highest levels of education may lack information regarding their legal rights and entitlements. They are refraining from seeking legal counsel or aid because they do not fully understand the law. Furthermore, their restricted literacy and education impede their capacity to sustain themselves and attain self-sufficiency. Therefore, the nation's legal aid movement has constantly prioritized the improvement of legal literacy. In my argument, I contend that if individuals were denied their legally mandated entitlement to education, the primary goals of education would not be completely realized, and our constitutional commitment to ensuring justice for all would become outdated.²¹

¹⁸ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98

¹⁹ *Khatri v. State of Bihar*, AIR 1981 SC 262. 6 AIR 1986 SC 991

²⁰ 1986 AIR 991

²¹ MP Jain, *Outlines of Indian History*, Wadhwa & Co. fifth edition 2000 p.23

AWARENESS OF LEGAL AID: STILL A CHALLENGE

An incomplete understanding of where to get legal representation is one component of the inadequate institutional architecture. Accused individuals often are unaware of their right to legal representation. Another major worry is the perception that a free service is of inferior quality. Inadequate funding means that the few attorneys who do work for the legal service authority are unable to conduct their jobs effectively. Obstacles to Accessing Legal Representation There is now a fragmented, unplanned, and unstructured legal aid movement in India. Cooperation is obviously lacking. It is now widely believed that no one should be able to avoid the justice system. Significant differences exist between the declared goals and the actual results. They are now too preoccupied with staying in business to take on pro bono cases, according to a recent survey by a legal firm. There are a number of reasons why attorneys would decline pro bono cases. There is a current shortage of funds. It was not customary for legal education to include social studies. Experts seldom engage with members of the public seeking legal aid, and neither the individuals nor their colleagues have a good grasp of the situation. Also, illiteracy is a major problem for legal help. It is well-known that 70% of rural residents are uneducated and do not know their legal rights. Mismanagement and denial of poor people's benefits and rights occur because of a lack of knowledge about the law. There are significant challenges both now and in the future for India's legal assistance system. A big problem with accessibility is that many low-income and rural communities do not have access to legal services due to a lack of knowledge, limited resources, and bad infrastructure. The quality of legal guidance provided through legal assistance is sometimes inadequate because of budget constraints, busy attorneys on the program, and systemic inefficiencies. Furthermore, the shame associated with seeking for legal assistance deters many individuals from asserting their rights in court. Future challenges may include meeting the increasing need for online and distant legal representation due to developments in technology and the COVID-19 pandemic. It is critical to strengthen legal aid policy frameworks, educate and train legal aid attorneys on a continuous basis, and reduce the disparity between rural and urban areas in access to legal assistance. It will require concerted action from the state, the legal profession, and civil society to resolve these issues and guarantee equal access to justice for all.²²

THE ROAD AHEAD

The initial stage would be to provide the general population with comprehensive knowledge regarding their rights and options under the law. This goal can be achieved by establishing a connection between the local courts and the law school's legal clinics. This would facilitate communication between those in need and these non-judicial experts, who can help individuals understand their rights under the Indian Constitution. One strategy to ensure that illiterate people know their rights is to organize awareness campaigns in remote places and provide lectures in the community's language. In order to bring more attention to the issue, it

²² S Muralidhar, Law, Poverty and Legal Aid , (2004) Lexis Nexis Butterworths, pp 37,38
CLR (VOL. V ISSUE I) JAN-JUNE, 2024

could be feasible to reach out to NGOs. The following step is to promote a culture of pro bono work and educate future lawyers on social issues. To add insult to injury, the present legal aid system has a number of procedures that fail to adequately track, evaluate, and report on the quality of services provided to those who need them. Although it is encouraging to see the Legal Aid Defence Council System in action, there are major limitations to how effective legal aid services can be due to the system's inadequate infrastructure, which prevents responsible court officials from monitoring legal aid cases in real-time. Therefore, as mentioned earlier, legal aid still needs help. To guarantee that everyone has access to legal aid, it is crucial to thoroughly examine the suggestions provided in this article. Modifications to India's legal assistance system may be necessary in the future to address emerging challenges and new situations. Mainly in charge of it are:

Advancements in Technology: Online legal aid portals, virtual legal clinics, and electronic filing systems are expected to play an increasingly larger role in the provision of legal aid services. Access to Expert Legal Counsel: Modern practice also shows a trend towards serving the targeted populations' legal needs, such as a specialized representation in several fields, which include family law, environmental law, and labor law among others. Also, the mentioned work may contribute to ensuring that geographically remote territories are connected and legal assistance is provided to a greater extent. Mediation, arbitration and negotiation are some of the techniques that are collectively referred to as ADR which is an abbreviation for Alternative Dispute Resolution. In expanding the delivery of legal aid services to reach a wider audience, chosen clients of the program can be encouraged to use other ADR processes like mediation and arbitration to address their concerns. Justice system changes: It is not implausible to then assume a direct connection between legal aid programs and other enhancements made to the body of law to enhance the functionality of the justice system by effecting eradication of frivolous procedures that characterize clogging of the system. It is crucial to understand that the priorities of the top legal aid goals of India will change over time according to the feedback and inputs including the government, legal professions, civil society and the society as a whole and as will the future directions of legal aid be shaped. The ultimate goal is to ensure that every person can receive justice, charge or seek his rights in the justice system without discrimination if he is a poor man or belongs to other category of discriminated people²³.

CONCLUSION

Being a significant component of India justice delivery system, legal aid guarantees equal accessibility of the court by all especially the needy poor and defends the citizen's legal claims. Two of the primary goals of the legal assistance program are to uphold the public's confidence in the judicial system, as well as ensure equal access to reactive justice across the populace. Due to the necessity that every citizen and toddler, man, woman, senior citizens and other groups and types of disadvantaged people should and can obtain legal aid justice no matter their positions in life or any form of social and economic disadvantages. Thus, according to

²³ VG Ramachandaran, Legal Aid an Imperative Social Need, (1970) 2 SCC (Journal) p.44.
CLR (VOL. V ISSUE I) JAN-JUNE, 2024

the Indian Constitution, equality before the law and equal protection of the laws is ensured by Article 39A of the Constitution that guarantees equal access to courts as an important component of the Indian justice system. Legal Aid law was introduced in India in 1987 through the Legal Services Authorities Act which resulted into formation of National Legal Services Authority (NALSA) and the state Legal Services Authorities (SLSAs). These organizations were formed for the purpose of providing pro bono legal aid was the key reason behind the formation of these institutions. In the following manner, legal assistance is an indispensable means of maintaining justice, safeguarding the rights of all citizens, and achieving social justice in service of justice. This shows the Indian government's commitment to eradicating anything that may prevent someone from seeking justice and thereby discourages the notion that there exists anyone who deserves to be turned away from a court of law because of his or her ability to pay the costs or expertise through a form of disability. The different Indian societies will therefore have their societies adapt new ways of tackling trials and these will require means that support legal aid programs needed to balance the odds in favor of Human rights.
