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## BEHIND THE BARS: ASSESSING THE EFFICACY OF LEGAL AID FOR INCARCERATED INDIVIDUALS IN INDIA

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### INTRODUCTION:

what we know from the texts regarding law is that the Indian justice system primarily operates on the principles of justice, equity, and good conscience. It also emphasises the rule of law, independence of the judiciary, and the adversarial system. However, there is a significant gap between these ideals and reality. Navigating legal proceedings is quite challenging and expensive. The complexity of the law, the high cost of hiring a lawyer, and the lengthy court processes create a barrier for many. In a country where we talk about equality and justice, the Indian justice system is a place where economic and social inequalities are prevalent. This results in unequal access to legal representation, where economic and social disparities become starkly visible within the justice system itself.<sup>1</sup>

This is where legal aid plays a crucial role. It aims to bridge this gap, ensuring that everyone, regardless of their financial status, has access to justice and legal guidance.

### MEANING OF LEGAL AID:

According to the Cambridge Dictionary, legal aid is “a system of providing free advice about the law and practical help with legal matters for people who are too poor to pay for it”. But in general, **legal aid** is a system that provides free legal services to those who can't afford to pay for a legal advisor. This is a constitutional right, guaranteed under Article 39A, which mandates

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<sup>1</sup> Nitin Kumar Bharti and Jonathan Lehne, *Justice for all? The impact of legal aid in India*, Paris School of Economics (August 2, 2025, 12:30 AM) <https://www.parisschoolofeconomics.eu/app/uploads/2024/10/BHARTI-Nitin-Kumar-JMP.pdf>

that the government must ensure equal access to justice for all citizens, regardless of their financial status.

### **IDEA OF LEGAL AID:**

According to the National Legal Services Authority (NALSA), Free legal aid is the provision of free legal services in civil and criminal matters for those poor and marginalized people who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any Court, Tribunal or Authority. These services are governed by the Legal Services Authorities Act, 1987 and headed by the National Legal Services Authority.<sup>2</sup>

Legal aid is a fundamental principle in many justice systems, ensuring that everyone has access to legal representation, regardless of their financial situation. It is designed to provide free legal services to individuals who cannot afford the costs associated with hiring a lawyer. This assistance can be crucial for people facing various legal challenges, from criminal charges to civil disputes. The core purpose of legal aid is to prevent a lack of funds from becoming a barrier to justice. It operates on the belief that a fair legal process requires professional counsel and that no one should be at a disadvantage in a court, tribunal, or any other legal proceeding simply because they are poor or needy. By offering this support, legal aid aims to level the playing field and uphold the right to a fair trial for all.<sup>3</sup>

Legal aid was first introduced through the Legal Aid Committee, which was formed in 1971 under the guidance of Justice P.N. Bhagwati. Additionally, Justice Bhagwati is credited with introducing the concept of Public Interest Litigation (PIL), a concept supported by Justice Krishna Iyer. Justice P.N. Bhagwati correctly pointed out, “the legal aid means providing an arrangement in the society so that the missionary of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law.” Therefore, legal aid should be available for those people who cannot afford the cost of justice.<sup>4</sup>

### **LEGAL AID FOR INCARCERATED INDIVIDUALS:**

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<sup>2</sup> National Legal Services Authority (NALSA), <https://nalsa.gov.in/legal-aid/> (Last visited on August 2, 2025)

<sup>3</sup> Siddharth Rana, *Legal Aid in Indian Constitution*, Volume 6, IJCRT, 323, 324-325 (2018), <https://www.ijcrt.org/papers/IJCRT1133494.pdf>

<sup>4</sup> National Legal Services Authority (NALSA), <https://nalsa.gov.in/legal-aid/> (Last visited on August 2, 2025)

Legal aid plays an important role in upholding the rights of prisoners and promoting justice within the carceral system. Providing legal assistance to those who are incarcerated is fundamental to ensuring their basic rights are protected, that they receive fair trials, and that they have access to the justice system. As India's prison population continues to expand, it's more important than ever to examine how effective legal aid programs are at addressing the specific challenges prisoner's encounter. These challenges can include navigating complex legal procedures, understanding their rights, and appealing convictions.<sup>5</sup>

In recognition of this need, the Bar Council of India's Legal Education Rules, 2008, outline the mandatory infrastructure for law colleges. Specifically, Clause 11 of Schedule III requires all law colleges in the country to establish and operate a legal aid clinic. This clinic must be staffed by final-year students and run in collaboration with legal aid authorities. This provision ensures that law colleges not only meet a basic infrastructure standard but also actively contribute to the provision of legal services and provide practical experience for their students. That is why numerous law universities are now establishing legal aid clinics to provide essential services. These clinics not only offer crucial legal help to prisoners but also provide practical experience for students, who get to work on real cases and contribute to the broader goal of a more equitable justice system. This dual function helps bridge the gap between academic learning and real-world legal practice, strengthening the overall framework for legal aid in the country.<sup>6</sup>

## **CONSTITUTIONALLY GUARANTEED RIGHTS OF THE INCARCERATED INDIVIDUALS:**

The Constitution of India ensures human rights and dignity for the people of India; just like that, even in prison, people don't lose their basic fundamental rights. The Indian Constitution guarantees fundamental rights for prisoners as well. The Hon'ble Supreme Court in the case of State of A.P. Vs. Challa Ramkrishna Reddy & Ors. (2000) 5 SCC 712<sup>7</sup>, "held that a prisoner,

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<sup>5</sup> Viral Kanudawala, *PROMOTING JUSTICE BEHIND BARS: EXAMINING THE ROLE OF LEGAL AID IN SAFEGUARDING PRISONERS "RIGHTS IN INDIA"*, Vol. 12 No. 3, YRA 11, 15 (2023) <https://yra.ijaar.co.in/wp-content/uploads/2024/02/120303.pdf>

<sup>6</sup> Department of Legal Affairs, Ministry of Law and Justice, <https://legalaffairs.gov.in/sites/default/files/AU3955.pdf> (Last visited on August 2, 2025)

<sup>7</sup> State of A.P. Vs. Challa Ramkrishna Reddy & Ors. (2000) 5 SCC 712

whether a convict or under-trial, does not cease to be a human being and, while lodged in jail, he enjoys all his fundamental rights guaranteed by the Constitution of India”.<sup>8</sup>

#### **ARTICLE 14 OF THE CONSTITUTION OF INDIA<sup>9</sup>-**

Article 14 of the Indian Constitution guarantees the "Right to Equality," ensuring that the State shall not deny any person equality before the law or equal protection of the laws within the territory of India.

#### **ARTICLE 19 OF THE CONSTITUTION OF INDIA<sup>10</sup>-**

Article 19 provides Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right— (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions 2 [or co-operative societies]; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; 3 [and] (g) to practise any profession, or to carry on any occupation, trade or business.

But Article 19(1) (a) and 19(1) (c) are the only two rights that a prisoner can enjoy.

#### **ARTICLE 21 OF THE CONSTITUTION OF INDIA<sup>11</sup>-**

Article 21 deals with the protection of life and personal liberty. —No person shall be deprived of his life or personal liberty except according to procedure established by law. It specifically covers-

1. Right to life &
2. Right to personal liberty.

The right to free legal aid is also constitutionally guaranteed. Any person who is arrested has the right to consult and get advice from a lawyer. If a prisoner who has been sentenced to jail and cannot get a lawyer to defend themselves or appeal their case, the court has the authority to provide one. This is based on the Constitution's Article 142<sup>12</sup>, which grants the court power

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<sup>8</sup> National Human Rights Commission, India, Rights of Prisoners, <https://nhrc.nic.in/sites/default/files/> (Last visited on August 2, 2025)

<sup>9</sup> INDIA C CONST. art. 14

<sup>10</sup> INDIA C CONST. art. 19

<sup>11</sup> INDIA C CONST. art. 21

<sup>12</sup> INDIA C CONST. art. 142

to do "complete justice," along with Article 21 (right to life and personal liberty) and Article 39-A (free legal aid).

Article 22(1)<sup>13</sup> of the Constitution of India provides a provision to consult and to be defended by any legal professional of their own choice.

Article 39(A)<sup>14</sup> of the Indian Constitution provides for equal justice and free legal aid. —

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 because of economic or other disabilities.

In the case of *Hussainara Khatoon (IV) Vs. State of Bihar* 1979 AIR 1369<sup>15</sup> The Supreme Court ruled that free legal services are an essential component of a fair and reasonable justice system.

### **EFFICACY OF LEGAL AID:**

Legal aid in India represents a critical as well as a very positive approach in ensuring equitable access to justice, particularly for the incarcerated. A significant portion of the prison population comes from underprivileged backgrounds and often lacks the means to afford legal representation. This socioeconomic disparity is a major factor in the prolonged detention of undertrials, many of whom may be innocent but are unable to navigate the legal system effectively. Consequently, countless individuals endure extended periods of incarceration simply because they cannot bear the financial burden of legal proceedings.<sup>16</sup>

### **ISSUES RELATED TO LEGAL AID:**

While legal aid for the citizens of India is a constitutionally guaranteed right, most people consider it a charitable element. A primary issue is the disparity between the number of established legal aid clinics and their actual effectiveness. Many of these institutions exist nominally, failing to operate with the efficiency required to meet the demand for their services.

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<sup>13</sup> INDIA C CONST. art. 22 cl. 1

<sup>14</sup> INDIA C CONST. art. 39 cl. A

<sup>15</sup> *Hussainara Khatoon (IV) Vs. State of Bihar* 1979 AIR 1369

<sup>16</sup> Akarshita Singh, Legal Aid in India: current scenario and future challenges, Manupatra Articles (August 2, 2025, 12:40 AM), [Legal Aid in India: current scenario and future challenges](#)

This is compounded by a critical lack of public awareness regarding the right to legal aid. A significant portion of the population, particularly those in marginalised communities, remains uninformed about their entitlements, leading to a profound underutilization of these vital resources.

Another major contributing factor is the evolving career aspirations of modern legal professionals. There is a discernible trend where a majority of law graduates and practitioners are drawn to more financially lucrative and high-profile fields, which often leads to a diminished interest in pro bono work and social service. Consequently, the combined effect of inefficient operational structures, public ignorance, and a lack of dedicated professionals creates a significant gap between the aspirational goals of universal access to justice and the current reality, hindering the system's ability to effectively serve the most vulnerable populations.

#### **CONCLUSION:**

Legal aid clinics and services play a crucial role in mitigating this injustice. They provide a platform for legal professionals and law students to volunteer their expertise, offering free legal assistance to undertrials and other vulnerable populations. This initiative is designed to enhance access to justice for marginalised communities, including women, children, senior citizens, and persons with disabilities. By offering timely and fair legal representation, these services can significantly expedite the judicial process and help ensure equitable treatment for all citizens, thereby reinforcing the foundational principles of the Indian justice system.

