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Legal Aid In India – A Right Still Finding its Feet

– Achaleshwari Khinchi

ABSTRACT

For a country that call itself the world’ s largest democracy, India has always had an uneasy relationship with the idea that justice should be free for those who cannot pay for it. The law exist, the court exist, and on paper the machinery for free legal assistance is fairly elaborate. Yet ask any law student who has spent a few weeks inside a district court, and they will tell you a different story- one of overworked panel lawyers, undertrials who have never met their counsel, and a system that promises equality before law but often delivers it only to those who can afford the wait. The gap between the text of the Constitution and the texture of daily court life is, in many ways the real subject of any honest account of legal aid in this country.

History of Free Legal Aid in India

- The Law Commission of India stated in its report on "Reform of Judicial Administration," published in 1958, that providing legal assistance to destitute litigants is a fundamental issue, not a minor procedural issue.
- The Government drew some lines for legal aid schemes in 1960.
- In the year 1976, Constitution (Forty-second Amendment) Act, 1976 was initiated which incorporated Article 39-A.
- Under the chairmanship of Hon. Justice P.N. Bhagwati, a Committee for Implementing Legal Aid Schemes was formed in 1980 to oversee and supervise legal aid projects.

- The Legal Services Authorities Act was established in 1987 to provide a formal framework and standardised structure for legal help schemes across the country.
- On December 5, 1995, the National Legal Services Authority was established as a statutory body to formulate policies and guidelines for providing legal assistance in accordance with statutory provisions, as well as to develop the most efficient and cost-effective legal service schemes.

The Constitutional Promise

The idea of legal aid in India is not a recent policy fad. It is rooted in Article 39A of the Constitution, inserted through the Amendment in 1976, which directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity, and in particular, to provide free legal aid through suitable legislation or schemes so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 14 guarantees equality before law, and Article 22(1) guarantees the right of an arrested person to be defended by a legal practitioner of their choice. Read together, these provisions were meant to ensure that the courtroom would not become a place where wealth, rather than the merits of a case, decided outcomes.

The Supreme Court gave teeth to these provisions well before any comprehensive legislation existed. In **Hussainara Khatoon v. State of Bihar (1979)**, a case that emerged from the shocking discovery of thousands of undertrials languishing in Bihar's Jail for years without trial, the Court held that the right to free legal aid at state expense is implicit in the right to a fair trial under article 21, and that an accused person who cannot afford a lawyer is entitled to one provided by the State at the cost of the State. **M.H. Hoskot v. State of Maharashtra (1978)** went further, holding that legal aid is a necessary ingredient of fair procedure, that a prisoner has the right to counsel at the time of sentencing and appeal, and that denying this would vitiate the trial itself. **Khatri v. State of Bihar (1981)** added that this right does not begin only at the trial stage but attaches from the moment of first production before a magistrate. These were not abstract pronouncements; they were responses to documented, large scale failure of the system, written in the urgent language of judges who had seen the human cost of delay and neglect.

The Legal Services authorities Act, 1987

It took until 1987 for Parliament to give this constitutional mandate a statutory body- the Legal Service Authorities Act. The Act, though passed in 1987, did not

actually come into force until 9 November 1955, and that date is now observed across the country as Legal Service Day. The Act created a pyramid of institutions; the National Legal Service Authority (NALSA) at the apex, State Legal Services Authority in every state and union territory, District Legal Service Authorities at the district level, and Taluk Legal Services Committees below that, reaching down almost to the level of the individual citizen. NALSA is headed by the Chief Justice of India as Patron-in-Chief, with a serving or retired Supreme Court judge as Executive Chairman, which tells you something about how seriously the judiciary, at least institutionally, has tried to own this issue.

Section 12 of the Act lists who is entitled to free legal services, and the list is broader than most people assume. It include women and children; members of Scheduled Castes and Scheduled Tribes; victims of trafficking in human beings or of beggar as referred to in Article 23 of the Constitution; person with disabilities as defined under the relevant disability legislation; persons in receipt of annual income below a limit prescribed by the respective Sate Government (or below Rs 5,00,000 in cases before the Supreme Court, as periodically revised); industrial workmen ; persons in custody, including in a protective home, a juvenile home, or a psychiatric hospital; and victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake, or industrial disaster. In practice, almost any undertrial prisoner in India qualifies for free legal aid simply by virtue of being in custody, regardless of income, which is precisely the category of person the Hussainara Khatoon line of cases was most worried about.

How the System Actually Works on the Ground

What does this look like inside a district court complex?

Usually there is a legal Aid Clinic or a Legal Services Authority office, often tucked into a corner of the court building, sometimes barely visible behind the more imposing offices of the Bar Association. A panel of advocates- empanelled for fixed terms, typically two to three years, and paid a modest honorarium per case or per appearance rather than a proper fee- is assigned matters by the Secretary of the District Legal Services Authority, who is usually a judicial officer deputed for the role. Para-legal volunteers, a category introduced more systematically over the past decade, act as the first point of contact, especially in jails, in remand homes, and in remote villages where people may not even known that free legal help exists at all.

Legal aid clinics inside prisons are meant to ensure that no undertrial is forgotten between hearing dates. Front office Legal aid clinics at police stations, started in some sates on a pilot basis, are meant to ensure that an arrested person is

informed of the right to legal aid at the very moment of arrest, not after weeks of detention have already passed. Lok Adalats- informed forums for the compromise settlement of disputes, particularly in matters like motor accident compensation claims, matrimonial disputes, and minor criminal cases of a compoundable nature- are another arm of the same architecture, designed to decongest regular courts while giving disputants a faster, less adversarial route to resolution. National Lok Adalats, held periodically on a single day across the country, have in some years disposed of several million cases in a matter of hours, though critics note that speed of disposal is not always the same thing as quality of justice.

On paper this is a fairly comprehensive ecosystem, In practice, the honorarium paid to panel lawyers in most remain low enough- often a few hundred to a couple of thousand rupees per case, depending on the stage and state- that legal aid work is frequently treated as a stepping stone for junior advocates building their practice rather than a serious professional commitment for someone established at the Bar. A senior advocate with a thriving private practice rarely takes on legal aid briefs, not because the law prevents it but because the economics simply do not make sense for someone with paying clients waiting outside chambers. The result is quality gap: legal aid clients frequently get competent but inexperienced counsel, while well- resourced litigant on the other side of a dispute can afford seasoned lawyers who know the judge, the registry staff and the unwritten local practice of a particular court.

Where the Gap Show

Several persistent problem keep surfacing in NALSA' s own annual reports, in Law Commission studies, and in the academic and journalistic literature on access to justice in India.

Awareness

Awareness of legal aid entitlements remains shockingly low, particularly in rural India and among first- generation literates. A person entitled to free legal aid may simply not know that the entitlement exists, or may not know how to access it without already being inside the legal system, which is often too late. The most useful moment for legal aid is at the point of arrest at the filing of a complaint, not weeks later after a chargesheet has been filed and a narrative has already hardened against the accused.

Quality and Accountability

There is a real quality and accountability problem once a panel lawyer is assigned a case. There is often little systematic follow up on whether the lawyer actually meets the client, prepares the matter properly, or simply shows up for routine adjournment without substantive engagement. Client and their families have reported, in surveys conducted by legal aid researchers and civil society organisations, meeting their assigned legal aid lawyers for the very first time on the date of the hearing itself, leaving no real opportunity for preparation or trust-building.

Funding and Scale of Need

Funding remains thin relative to the scale of need. India has one of the largest undertrial population in the world: figures periodically released by the National Crime Records Bureau have shown that well over two-thirds of all prisoners in Indian jails are undertrials awaiting trial rather than convicts serving out a sentence. A meaningful proportion of them remain in custody well beyond what their eventual sentence, if convicted would likely have been, often simply because nobody pursued their bail application with any urgency. The budgetary allocation for legal aid, spread across the central government, state governments, and the judiciary's own resources, has historically been a tiny fraction of overall justice-sector spending, which itself is a small fraction of total public expenditure.

Institutional Tension

There is also a structural tension in having the legal aid machinery headed by judges and administered substantially through court registries. While this arrangement gives the system institutional weight and lends it the authority of the judiciary, it also means legal aid lawyers sometimes hesitate to be too adversarial against the state, or too critical of court delay and administrative failure, since they operate within the very institutional framework whose practices they might occasionally need to challenge on behalf of client.

Efforts at Reform

To NALSA's credit, the last decade has seen genuine, sustained attempts to close these gaps, even if results remain uneven across states. The Nyaya Deep newsletter and various State Legal Services Authority outreach campaigns have tried to publicise entitlement through radio, print, and increasingly through social media and short-format video content aimed at rural audiences. Tele-Law, a scheme run jointly with the Department of Justice and the network of Common Service Centres, allows villagers to consult a panel lawyer through video

conferencing from their nearest CSC, bypassing the need to travel long distances to a district headquarters simply to ask a preliminary question.

Legal aid defence counsel schemes, modelled loosely on public defender system used in other jurisdictions, have been piloted in some states to create a cadre of full-time, salaried legal aid lawyers rather than relying entirely on a rotating panel of private advocates who treat legal aid work as a part-time, secondary commitment. The Pro Bono Legal Services initiative has also tried to nudge senior and well-established advocate towards taking up a quota of free cases each year, recognising explicitly that the panel-lawyer model alone, given its economics, cannot bridge the resource and experience gap on its own.

Law schools, too, have increasingly built legal aid clinics into the curriculum, partly under pressure from the Bar Council of India's clinical legal education requirements. This means students undertaking internship at District Court Or High Courts, much like the kind of placements many law students complete during their degree, often get their first real exposure to legal aid work as part of their formal training rather than only after entering practice.

THE ROAD AHEAD

The first step would be to educate the general population about their legal rights and potential legal remedies. This can be accomplished by connecting law school legal clinics to local courts in the region, allowing persons in need of aid to first contact these non-judicial professionals in order to grasp the rights given by the Indian Constitution.

Another strategy is to run campaigns in remote regions and make speeches in local languages to ensure that even individuals who are illiterate are aware of their rights. NGOs might be enlisted to assist in raising awareness. The next step is to promote a pro bono culture, and social education should be provided to law students.

Furthermore, the current legal aid system lacks efficient procedures for tracking, analysing, and providing feedback on the efficacy of the help offered to intended recipients. Although the implementation of the Legal Aid Defence Council System is a major step forward, the infrastructure absence of real-time monitoring of legal aid cases by in-charge court officials severely limits the efficient provision of legal aid services.

As a result, as previously stated, Legal Aid still requires assistance. The recommendations in this paper must be considered in order to make Legal Aid a service available to all persons.

The future of legal aid in India will likely continue to evolve in response to various factors and challenges. Key factors regulating it are:

Technological Advancements: The use of technology, such as online legal aid portals, virtual legal clinics, and e-filing systems, is likely to expand in the delivery of legal aid services. This can help bridge geographical gaps and make legal assistance more accessible.

Specialized Legal Aid Services: There may be a growing emphasis on providing specialized legal aid services for specific areas of law, such as family law, environmental law, and labor law, to address the diverse legal needs of citizen.

Alternative Dispute Resolution (ADR): Promoting ADR mechanisms, such as mediation and arbitration, as part of legal aid services could help in resolving disputes more efficiently and cost-effectively.

Legal Reforms: Legal aid initiatives may be closely tied to broader legal reforms aimed at simplifying legal processes, reducing case backlog, and enhancing the efficiency of the justice system

It's important to note that the future of legal aid in India will depend on the priorities of the government, the legal community, civil society organizations, and the evolving needs of the population. The goal will always be to ensure that justice is accessible to all citizens, especially those who are economically disadvantaged or face barriers in accessing the legal system.

Conclusion

Legal aid is a crucial component of India's legal system, aiming to provide equal access to justice and protect the rights of all citizens, especially those who are economically disadvantaged. The legal aid system plays a vital role in upholding the rule of law and ensuring justice for all.

Legal aid plays a vital role in ensuring that justice is accessible to all individuals, regardless of their economic or other disadvantages. It is an integral component of India's legal system and is enshrined in Article 39A of the Indian Constitution, which emphasizes the importance of equal access to justice. The Legal Services Authorities Act, 1987, provides the legal framework for the provision of free legal aid in India, establishing the National Legal Services Authority (NALSA) and State Legal Services Authorities (SLSAs) to facilitate its implementation.

Legal aid remains a critical tool for upholding the rule of law, protecting the rights of all citizens, and promoting social justice. It reflects the commitment of the Indian state to remove barriers that might prevent individuals from accessing

justice and reinforces the principle that justice should not be denied due to economic or other disabilities. As legal aid programs continue to evolve and expand, they contribute to the realization of a more equitable and just society in India.
