
Legal Provisions Relating To Legal Aid: A Critical Study

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INTRODUCTION

The terminology Legal Aid emphasizes the provision of cooperation to those who cannot continue the legal representation and access to the court systems. This poses the assimilation of labours to the Government, community and Bar Council for delivering the lawyers' services to those unable people without paying money or by some token charges [13]. The showcase of ineffectiveness for consulting or to be demonstrated by a lawyer may project similar outcomes compared to the deprived of the laws' security. Accordingly, the first principle of Justice coined by Rawl entails that each people has the equal right to access the entire enormous system based on

equal liberties for the entire people.

Concept of Legal Aid and legality

India has the context of the state obligations and constitutional demands where Legal Aid offers a positive enthusiasm and dynamic functionalities that must include preventive and strategic services. The concept of legal poverty articulates the broad incapability of many citizens of the country for the complete utilizing of the laws from where the legal institutions have functioned as the welfare state [2]. Besides, the necessities of political, social, and economic aspects from where the Legal Aid claims imply are currently emphasized as the

constitutional imperative that originates from the various Articles including 14¹, 21², 22(1)³, 39-A⁴ of the Indian Constitution.

The implicated actions of Legal Aid sheds light on the predictions that the inferior Indian people have easier access to every Court, and several legal agencies based on Government regulations ensure that the decisions that offered are equitable and considers the disabilities and rights of the parties in the Court. The activation of the Legal Aid ensures the success of distributive Justice, eradicates the socialized discrimination against poor Indian people and the beneficiary implications of the welfare benefits [1]. This Legal Aid was implementing as the necessary Indian Constitutions' provisions by which Indian Parliament proceeded the Legal Services Authority Act, 1987 that activated from the dated 12th June 2002. Currently, this stated Act offers a broad discussion dependent on merits by Lok Adalats that is comprised by the SLSA or State Legal Services Authority and the Indian Presiding Officers. The discussion proceeds based on those matters that are correlated with the citizens' utilized services that have thoroughly articulated in the Act. Now, the professionals identify that various operating laws of supply and demand continue the operations in the entire naked fury within the legal professions. In the Indian lawyers' practices, there are no fixed charges that a lawyer may charge from his or her clients that severely leads to inequality and discrimination within the legal practices between the poor and prosperous citizens [11]. Due to the presence of inequality demand of charges, the legal competency has risen, enhancing the severity of risks due to higher financial resources.⁵

History of Legal Aid in India

¹ Constitution of India: Article 14 Equality before law. The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

² Article 21- Protection of Life and Personal Liberty

³ Article 22- Protection against arrest and detention in certain cases

⁴ Article 39A- Equal Justice and Free Legal Aid

⁵ Legal Aid and Justice for poor- N.R.Madhav Menon PP 344, Paragraph 2

Prior to the initiation of the ongoing Legal Aid movement in 1851, the earlier movement generated. This was enacted in France for supporting legal cooperation with needy people. The history of the processed attempt in the United Kingdom dependent on the State's portion that offers diversification in legal services to the needy and poor people. This action proceeded since 1944 while Viscount Simon posted as Lord Chancellor recruited the Rushcliffe Committee for investigating the existing legal features in Wales and England. Through this investigation, the necessary legal advice provides to the poor people and demonstrate such recommendations that ensure that the needy citizens are accessed the same legal advice by the State [9]. Accordingly, the Indian Government in 1952 integrated such initiatives in diversified Commissions and Ministerial Conferences to identify various questions concerning Legal Aid for the needy and poor people from where the Government articulated few guidelines based on the Legal Aid schemes in 1960.

This scheme was regulated by Law Departments, societies, Legal Aid Boards, etc., in India's diversified states. A Nationalized Committee developed in 1980 under Mr P.N. Bhagwati, the Chairman of Indian Justice. The Indian Supreme Court's Judge further led this to investigate and regulate the throughout Indian Legal Aid programs by which the Committee acquired the popularity, namely **Committee For Implementing Legal Aid Schemes** or **CILAS** that initiates the regulation of the legal aid actions throughout India.

Lok Adalats

The initiation of Lok Adalats in the Indian legal system included an additional and extensive view within the Indian Justice Dispensation System. This accessed success in offering a supplemental forum to those respective litigants for reconciliatory agreements of their disputes. After the establishment of Legal Aid, 1987 offered relevance in the background of Legal Aid because the **Legal Services Authorities Act** or **LSAA** was

implemented to deliver the statutory base to the diversified programs dependent on Legal Aid that introduced a sustained pattern throughout India [19]. After a certain alteration, this Act was imposed on 9th November 1995 by the Amendment Act 1994 where the Honourable Justice, Mr R. N. Mishra and the Indian Chief Justice performed the tremendous role.

Right to Legal Aid: A Constitutional Commitment

The famous French philosopher specialized in politics, Charles de Montesquieu, asserted that “In the State of nature.....all men are born equal, but they cannot continue in this equality. Society makes them lose it, and they recover it only by the protection of the law.” There is a need for similar Justice for the inferior, weak, and illiterate Indian citizens to protect the laws [4]. The aspects of this Legal Aid is needed to certify that the presence of varieties of scopes to secure Justice are applied similarly for the individual people irrespective of literacy, poverty, etc.

Rule of Natural Justice in India

Indian Constitution concentrates explicitly on the rules of laws and constitutionalism, where these rules of laws illustrate the fundamental and core structure of the Indian Natural Justice and Constitution. These Natural Justice rules entail that citizens should never be punished by the implemented decisions that influence their legal expectations or legal rights without the provisions that they have offered prior notice against the opponent [6]. This leads to the fair scopes to answer the concerning questions, which leads to the opportunity to demonstrate their own cases.

Article 14 of the Constitution

Indian Constitution’s preamble extensively secures its entire Indian citizens along with political, social and economic Justice. This Article of the Indian Constitution clarifies

that any state cannot refuse to implement the laws for equal protection to any citizens within India's premises by which this Article's purpose to enforce equal Justice has been activated. Still, the claim of equal Justice becomes illogical until the illiterate or inferiors cannot implement their rights due to poverty or illiteracy.

Article 38 of the Constitution

Based on the Legal Aid, to protect the Indian citizens securely, the Indian Constitution's Article 38 and 39 demonstrates the prominent emphasis on this regard. As per the statement of Article 38(1), every State should endeavour for promoting the people's welfare through protecting and securing them effectively. This becomes the social order by which the political, economic, Justice, and social aspects should inform the national life's entire institutions.

Article 39-A of the Constitution

This above-demonstrated Article emphasizes that the State has to ensure to the legal authority that the legal applications' operations foster Justice dependent on a similar scope. This should be particularized that offers free Legal Aid by the applicable schemes or legislation or through other effective ways for ensuring that the scopes for implementing Justice are not rejected for any of the Indian citizens' due to economic or other disabilities [7]. Indian Constitution under this stated Article strictly provides the statements for the free Legal Aids to the respective under-developed and inferior sections throughout the Indian territory.

Legal Services Authority Act, 1987

This has mentioned above was altered by another Act of 1994 that was further reimposed on 9th November 1995. This stated Act purposefully supports the entire Indian

citizens by implementing the network throughout India to offer the best, reliable, and free services in the Court to the inferior sections [17]. Prior to the Indian laws and legal systems fostering equal Justice based on equal opportunity to the entire people, this demonstrated Act creates the mandatory rule to the individual State to ensure equality of their citizens. From this perspective, Legal Aid endeavours to ensure that the commitment based on the Indian Constitution is accomplished by implementing a higher spirit where equality in Justice creates the availability for the weaker and inferior sections of the Indian society [3]. After enacting this Act catalyzes the constitutional instructions cherished under the Indian Constitution's Article 14 and 39-A. The purpose of this Act is to accomplish its vision "Access to Justice for all" by which every citizen should be undertaken the similar Justice irrespective of visualizing the inferiority or superiority aspects [10]. There is a necessity that Indians are aware of the legal rights prior to enabling them to utilize the free of Legal Aid opportunities proceeding under this Act.

Incorporation of a new provision under Article 39-A

With the proceeding of the continuous alteration, the latest provision was enacted in the Indian Constitution by the Constitutional 42nd alteration under the section of Article 39-A. This ensures the offering of Legal Aid and, accordingly, supports in enhancing the equal Justice section In Indian Constitution. Accordingly, this Article was implicated under Part-IV, where the State Policy's Directive Principles entailed free Legal Aid and equal Justice, emphasizing that the State should always secure the entire legal applications' operations and foster Justice to enforce similar opportunity. Through this Act, the applicable legislation has offered free Legal Aid that executes the scopes for establishing Justice to the individual Indian citizens without focusing on their economic stability or other existing disabilities.

Right to Free Legal Aid in Indian Constitution

The rights as mentioned above is the crucial right that the Indian Constitution significantly commits that comprises under Article 21 dependent on fair, and reasonable of the Indian Constitution. The rights that first need to appeal in the Sessions Court following the High Court that is offered in the Criminal Procedure Code of 1973. This entire progress has occurred to become the fair procedure's component that is based on the civilized legal theory [15]. The individual stage of creating the rights to acquire benefits is mandatory in the legal Constitution, where each interaction is satisfying it, is unconstitutional⁶ and unfair for the people.

While the legal right has proceeded, the Court explained two critical factors related to the appeal rights while appealing has continued to the intermediate of fair procedure [12]. Firstly, the judgement's copy has to be served to the prisoners for filing the appeal. Secondly, offering free services in the Court to those who cannot afford the huge amounts and disable from supporting the legal cooperation.

State's liability of the Free Legal Aid

From this perspective, the Indian Supreme Court declared that Rights to Free Legal Provisions is the State's liability where the people who cannot afford the costs of the legal actions can be proceeded by bearing the costs by the State [8]. This had been declared in *M.H.Hoskot vs State of Maharastra*⁷, where the free legal services to those inferiors have been the State's responsibility. This was the factor of the reasonable procedure implicate in the section of Article 21.

⁶ *M.H.Hoskot vs State of Maharastra*, AIR 1978 SC 1548

⁷ AIR 1978 SC 1548. Also see *Hussainara Khatoon vs Home Secretary, Bihar*, AIR 1979 SC 1369; *Sheela Barse vs State of Maharastra*, AIR 1983 SC 378. It was held that free legal assistance to the poor or indigent accused was a sine qua non of justice.

The liability of the Constitution for offering free services in the court cases to the inferior has not arisen while the trial initiates; instead, it connects while the respective for the initial time produced prior to the Magistrate [16]. At that moment, there has necessary for the accused individual to acquire competent advice and legal representation.⁸ This has further occurred at the Sessions Judge or the Magistrate prior to whom the accused individual seems for solving the court cases. Dependent on the Constitution's liability, this is under the mandatory action to inform that respective accused individual that if he or she cannot afford for engaging a lawyer, then through the cost of the State⁹ the person is entitled to acquire the free services for continuing his further legal actions. From this point of view, it has been claimed that Article 21 entails a worthwhile commitment on the Judge or the Magistrate to investigate whether the accused individual has the ability to continue the legal actions or experiences poverty or other disabilities by which the respective must be acquired a lawyer at the State's costs.

Article 22(1) of the Constitution

The earlier mentioned section demonstrates that the individual who is detained should not be refused the right of consulting and involving the legal professionals of his or her choices. The right to consult and shield the accused person by the legal professional is committed to defending the prisoner at the best level. The criminals access the legal right at the trial stage prior to the criminal Court or whether the arrest is created under the generalized laws or beneath the specialized statute¹⁰ or even prior to the specialized tribunal instead of only at the pre-trial stage.

⁸ Khatri vs State of Bihar, AIR 1981 SC 928

⁹ See also Suk Das vs Union Territory of Arunachal Pradesh, AIR 1986 SC 991

¹⁰ State of M.P vs Shobharam, AIR 1966 SC 1910. See Ram Swarup vs Union of India, AIR 1965 SC 247

The Indian Supreme Court has strictly directed that the arrested person has the legal right to have informed someone of his known about the actions of the arrest and can surely consult with the lawyers privately. This statement had informed in the specified case of Joginder Kumar vs State of U.P¹¹, which were intrinsic in Article 21 and 22. From this perspective, this has been asserted that consulting with a lawyer is the legal right to discuss him away from the police's hearing.

Free Legal Aid in India: The Positive Contribution of Judiciary

From the varieties of legal perspectives, the Supreme Court accessed a significant opportunity to create the remarkable announcement about the rights of the inferior sections throughout the country. This had led to the case of Hussainara Khatoon¹². The case's petitioner led to the Indian Supreme Court's notice that the majority of the inferior section-enabled accused individuals have acquired more punishment than they actually did in reality, which is the most pathetic for the prisoner and the Indian Constitution also where sometimes delay had occurred for solving the case [5]. These delayed actions had occurred due to the inability of engaging the legal lawyers for solving the case. From this perspective, poverty is the significant and critical reason for the delay in solving the case. In the case, as mentioned earlier, the Court declared that Article 39-A shed light on the free services that were the critical element of the fair and Justice process from where the legal power to free beneficiary facilities was implicated in the commitment under Article 21.

After certain two years of the occurrences of the prior stated case, the Supreme Court opined the accurate judgment based on the legal right to free services which are incapable of engaging the lawyers for pursuing their cases. This had answered in the Khatri

¹¹ AIR 1994 SC 1349

¹² AIR 1979 SC 1369

vs State of Bihar¹³ case where the Court had asserted that every State is bound to permit these allowances of those incapable people at the trial stage and at the period of producing to the Magistrate. This leads to the right to implicate the financial benefits for engaging the lawyers to proceed with the respective case.

The Indian Chief Justice P. N. Bhagwati articulated the necessities of integrating the awareness for the legal actions to an inferior section of the people because they have not acquired the accurate knowledge about their rights in the country if the specific case has proceeded in the Court. From the case of Suk Das vs Union Territory of Arunachal Pradesh¹⁴, the Justice visualized that the majority of the Indian people are concerned about the rights implicated upon them due to illiteracy from where they are incapable of the entitlements and rights beneath the Indian law. Due to their inefficacy about acquiring legal awareness and illiteracy, they have not improved themselves and cannot reach the self-reliant position from where they are not able to approach the lawyer.

Indian campaigner and social Justice Krishna Iyer had asserted that if the prisoner punished to custody is incapable of continuing his or her statutory right of appeals, including the specialized leave applications to the Indian Supreme Court for involving the legal professionals there are implied within the Court under the section of Article 142 with Article 39-A and 21 of the Indian Constitution. There is intrinsic power to recruit the professionals for such individuals to proceed with the entire Justice¹⁵ actions.

This demonstrates the legal responsibilities for the public where the individual branch of the Indian Government has to follow the rules of laws and put forward the trust with the Indian Constitution through developing the rules for helping the inferior section. While there

¹³ AIR 1981 SC 262

¹⁴ AIR 1986 SC 991

¹⁵ Order 33 Rule 9A CPC

have laws for protecting the inferior and disable section throughout the country, the Government displays the laziness to enforce the laws [14]. This similar instance was experienced during the case of State of Haryana vs Darshana Devi¹⁶ in the Supreme Court, where the inferior accused were not effectively acquired the Justice due to his poverty line. This led to the refusal to appeal the excepted provisions of the Order XXXIII of the Code of Civil Procedure, 1908.

National Legal Services Authority (NALSA)

This is the regulatory authority in India developed on 5th December 1995 that has continued its services for monitoring and implicating various legal aid programs throughout the Indian periphery, where this authority adopts the legal programs. The diversification of programs includes establishing legal clinics in law colleges and universities, fostering legal literacy, implementing Lok Adalats and training paralegals, etc. This NALSA is the significant authority that implements principles and policies to create legal services available under the Act's provisions by which the most accurate and economically beneficiary schemes have been framed [18]. The authority also donates massive grants and funds to NGOs and State Legal Services Authority to implicate legal aid programs and schemes.

As per Section 3(1) under chapter II of the Act¹⁷, the Indian Government was commanded to develop authority, namely NLSA, for exercising the responsibilities and powers implicated in it under the Act. This has also named as State Legal Services Authority that establishes cells within the prisons dependent on the legal aids by which the prisoners can lodge the complaint. This offers efficiency in legal Aid by which the prisoners are permitted by Section 12 of Legal Services Authorities Act, 1987 that constantly regulates and evaluates the implications of the legal programs in the entire country.

¹⁶ AIR 1972 855

¹⁷ The Indian Legal Services Authorities Act, 1987

Conclusion and Suggestions

The Legal Aid reflects its aim to ensure distributive Justice, eradication of the structural and social discrimination against the inferior and the beneficial implementation of the welfare benefits. This performs its responsibilities concerning the Legal Services Authorities Act, 1987, which entails the accurate guidelines for providing free Justice who cannot provide the massive amounts of charges for lawyers to resolve the cases. There is a differentiation between the rural and urban inferior with the Indian superior people. The effective firm has needed to consider all of these aspects of their legal requirements based on which the program has been designed.

There have diversified causes for the popularity of this ancient aspect, including delayed in the generalized law courts, increasing litigation, delayed in the disposal, etc. still, there has the alternative innovation resolution machinery. While the Indian Supreme Court provides influences to Article 39-A in many legal cases, the right of the free legal Aids with speedy ways' Justice is an integral part of Article 21. The stiffness area of the bureaucracy demonstrates the understanding of the legal Aid's policing role. In the particular State, the Indian Government cannot be presented for the legal actions against itself to revengeful the inferior's rights in the legal actions.

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