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# **BARRIERS TO LEGAL AID FOR WOMEN: A COMPARATIVE STUDY OF INDIA AND GLOBAL BEST PRACTICES**

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## **Introduction**

Legal aid is a cornerstone of access to justice, particularly for vulnerable and marginalized groups like women, who often face systemic barriers in asserting their rights. In India, despite constitutional guarantees and statutory frameworks promoting legal aid, women remain at a significant disadvantage in accessing justice. They encounter myriad barriers, including cultural, economic, institutional, and procedural hurdles. These barriers often leave women, especially those from rural or impoverished backgrounds, unable to navigate the complex legal system or assert their rights effectively.

The objective of this research is to analyse the barriers that prevent women in India from accessing legal aid, while comparing these challenges with global best practices. By studying successful models from other countries, we can identify potential reforms and policy adaptations that could enhance access to legal aid for women in India. This research aims to fill a critical gap by highlighting the need for gender sensitive legal frameworks and offering a comparative lens through which India's legal aid system can be evaluated.

This research is significant because it underscores the intersection between gender and justice. Access to legal aid is not just a procedural issue; it is deeply entwined with socio economic realities that disproportionately affect women. In countries like India, where patriarchy, economic dependency, and limited education often restrict women's ability to seek justice, understanding these barriers and drawing lessons from other nations can guide reforms. This paper addresses the following key research questions: What are the barriers to legal aid for women in India? How do these barriers compare with those in other countries? What global practices can be adapted to the Indian context?

## Literature Review

Historically, legal aid in India has its roots in post-independence jurisprudence, with the Constitution recognizing the need to provide equal justice and free legal aid under Article 39A. The Legal Services Authorities Act, 1987 institutionalized this constitutional mandate by establishing statutory mechanisms to deliver legal aid to vulnerable populations, including women. Over the years, the Indian judiciary has played a vital role in expanding the scope of legal aid, particularly for women who face discrimination or violence. However, despite the existence of these legal frameworks, challenges persist in terms of implementation and outreach, especially in rural areas where patriarchal norms and limited awareness act as formidable obstacles.

Globally, legal aid for women has been emphasized in various international frameworks, including the United Nations Principles and Guidelines<sup>1</sup> on Access to Legal Aid in Criminal Justice Systems and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These documents provide guidance to countries on how to ensure that women have access to legal aid, particularly in matters related to violence, discrimination, and family law. Comparative studies of legal aid frameworks in countries such as the United States, Canada, and Scandinavian nations reveal that these countries have developed comprehensive, gender sensitive legal aid systems. For instance, in the United States, the Legal Services Corporation focuses on providing civil legal aid to low-income women, particularly victims of domestic violence. Similarly, in Canada, the Legal Aid Ontario (LAO) program runs community outreach initiatives that specifically target women facing violence, providing not only legal representation but also emotional and psychological support.

### Barriers to Legal Aid for Women in India

Women in India face a range of barriers when attempting to access legal aid. One of the most significant barriers is cultural and social in nature. Patriarchal norms, deeply entrenched in Indian society, restrict women's autonomy and discourage them from seeking legal assistance, particularly in matters related to family disputes or domestic violence. In rural areas, the situation is exacerbated by a lack of legal awareness. Women are often unaware of their rights or the existence of free legal aid services. Additionally, societal pressures and fear of ostracism further prevent women from pursuing legal remedies.

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<sup>1</sup> [dag.un.org/bitstream/handle/11176/312338/A\\_HRC\\_29\\_26-EN.pdf?isAllowed=y&sequence=3](http://dag.un.org/bitstream/handle/11176/312338/A_HRC_29_26-EN.pdf?isAllowed=y&sequence=3)

Economic dependency also acts as a major barrier to women's access to legal aid. Many women, especially those from economically disadvantaged backgrounds, are financially reliant on their male family members, making it difficult for them to seek independent legal recourse. While legal aid services are technically free, hidden costs such as transportation to courts, lost wages, and the emotional toll of prolonged legal battles often discourage women from pursuing justice.

Institutional barriers further complicate the picture. Gender bias within legal institutions, including the police, judiciary, and even legal aid providers, can deter women from seeking help. Male dominated legal institutions often fail to understand or prioritize women's legal issues, leading to inadequate legal representation. Furthermore, there is a significant lack of female representation in the judiciary and among legal professionals, which is a major deterrent for women who are more comfortable discussing sensitive issues such as domestic violence or sexual harassment with female professionals.

Procedural barriers, including delays in the judicial process, are another critical issue. India's overburdened judiciary often results in significant delays in legal cases, especially those involving women. For women facing domestic violence, sexual harassment, or divorce related disputes, these delays can be emotionally and financially draining. Additionally, poor enforcement of laws, especially in rural areas, means that even when women do secure legal aid, the actual implementation of legal remedies can be inconsistent and ineffective.

Globally, several countries have developed effective models for gender sensitive legal aid. In the United States, the Legal Services Corporation (LSC) focuses on providing legal aid to low-income women, particularly those facing domestic violence and family law issues. The LSC integrates legal aid with social services, ensuring that women receive not only legal representation but also counselling and shelter support when necessary. This holistic approach recognizes that legal aid cannot be isolated from the social and economic conditions women face.

In Canada, Legal Aid Ontario (LAO) operates with a focus on gender sensitive outreach programs. LAO has established community based legal clinics that specifically target women experiencing violence or discrimination, providing them with legal representation, education, and support services. These clinics also run awareness campaigns to ensure that women,

especially in rural and remote areas, are aware of their legal rights and the availability of free legal services.

Scandinavian countries, including Sweden and Norway, have integrated legal aid into their broader social welfare systems. These countries provide comprehensive support to women by offering legal aid alongside housing, financial assistance, and healthcare services. This integrated model ensures that women receive holistic support, enabling them to pursue justice without worrying about economic or social repercussions.

In developing countries, South Africa has pioneered the use of specialized gender courts that expedite cases involving violence against women. These courts provide fast track justice, ensuring that women do not face prolonged legal battles. Similarly, Brazil and Bangladesh have implemented community based paralegal services, where women from local communities are trained as paralegals to provide basic legal assistance to their peers. This grassroots approach has proven effective in reaching women who may not otherwise seek formal legal aid.

### **Comparative Analysis: India and Global Practices in Legal Aid for Women**

Legal aid plays a crucial role in ensuring access to justice, particularly for marginalized groups like women. While India has made significant strides in establishing a robust legal aid framework through institutions like the National Legal Services Authority (NALSA), significant challenges remain, especially in reaching women in rural and marginalized communities. A comparative analysis between India's legal aid system and global best practices highlights key areas where India can learn from successful models in other countries. These models have integrated legal aid with social services, tailored their approach to address gender specific needs, and ensured wider outreach and representation, which have led to more effective legal aid delivery for women. By examining successful practices from countries such as the United States, Canada, South Africa, Brazil, and Bangladesh, we can identify concrete steps that India could adopt to enhance its legal aid system for women.

### **Legal Aid Framework in India**

India's legal aid framework is anchored by the Legal Services Authorities Act, 1987, which established NALSA and a network of state and district legal services authorities. This framework aims to provide free legal services to individuals from marginalized sections of

society, including women, Scheduled Castes, Scheduled Tribes, and economically weaker sections. Legal aid is intended to cover a wide range of issues, including criminal cases, family law matters, domestic violence, and property disputes. Despite this comprehensive mandate, however, India's legal aid system faces numerous implementation challenges. NALSA's outreach, particularly to women in rural and remote areas, is often limited due to a lack of awareness, insufficient infrastructure, and cultural barriers that prevent women from seeking legal recourse.

In practice, the system tends to serve urban populations better, while women in rural and tribal areas are often left out. Furthermore, even though laws like the Protection of Women from Domestic Violence Act, 2005 and the Criminal Law (Amendment) Act, 2013 have specific provisions for women's protection, accessing legal aid for such matters remains a challenge for many women due to the aforementioned barriers. In many instances, women do not seek legal aid either because they are unaware of their rights or because of societal pressure to remain silent, especially in cases involving family and domestic issues.

Judicial precedents have also played a critical role in strengthening women's access to legal aid. Landmark judgments such as *Hussainara Khatoun v. State of Bihar*<sup>2</sup> and *Sheela Barse v. State of Maharashtra*<sup>3</sup> have highlighted the need for timely and effective legal representation, especially for women in custodial settings or those facing systemic disadvantages. However, despite these laws and court directives, the gap between the legal framework and its on ground implementation remains wide. Initiatives such as NALSA's Scheme for Legal Services to Women Victims of Violence aim to address this gap by providing legal support and victim compensation, but the impact of these schemes is often limited by structural inefficiencies, underfunding, and lack of awareness.

### **Global Best Practices: Learning from Gender Sensitive Legal Aid Systems**

Many countries around the world have successfully implemented gender sensitive legal aid systems that provide valuable lessons for India. Key practices from countries like the United States, Canada, South Africa, Brazil, and Bangladesh offer insights into how legal aid systems can be more inclusive, accessible, and effective, particularly for women.

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<sup>2</sup> 1979 AIR 1369

<sup>3</sup> 1983 AIR 378 1983

### **United States: Integration of Legal Aid with Social Services**

The United States has a well-established legal aid system, with various federal and state funded legal aid programs that provide free legal services to low-income individuals. A key feature of the U.S. system is its integration of legal aid with social services, which ensures that women facing issues such as domestic violence, eviction, or discrimination can access both legal representation and social support. For instance, many legal aid organizations in the U.S. work closely with shelters, counselling services, and healthcare providers to offer holistic support to women in crisis. This integration not only helps women navigate the legal system but also addresses their immediate social and economic needs.

In India, the legal aid system could greatly benefit from a similar approach, especially in cases involving domestic violence, trafficking, or sexual harassment. While India does have One Stop Centres (under the Ministry of Women and Child Development) that provide integrated services for women, these centres are not adequately linked with legal aid services. Greater collaboration between legal aid providers and social services could ensure that women receive the support they need beyond just legal representation.

### **Canada: Gender Sensitive Legal Aid and Community Outreach**

Canada's legal aid system is recognized for its focus on gender sensitive issues and its strong emphasis on community outreach. Legal Aid Ontario, for example, offers specialized services for women dealing with family law issues, domestic violence, and immigration matters. Canada also places a strong emphasis on public legal education and community legal clinics, ensuring that women, especially from marginalized communities, are aware of their legal rights and the services available to them. These community clinics are located in areas with a high concentration of vulnerable populations, making legal aid more accessible to those who might otherwise be excluded.

India, with its vast rural population and linguistic diversity, could adopt a similar community-based outreach model. Community legal clinics could be established in remote areas where formal legal institutions are often inaccessible. Moreover, providing legal education programs for women, particularly in local languages, would be instrumental in raising awareness about legal rights and the availability of free legal aid services. This would address one of the major barriers to legal aid in India: the lack of awareness among women about their legal entitlements.

### **South Africa: Specialized Gender Courts**

South Africa has pioneered the use of specialized gender courts to address cases involving domestic violence, sexual assault, and other crimes against women. These courts are designed to be more sensitive to the needs of women, ensuring that their cases are handled in a timely, efficient, and compassionate manner. The gender courts are staffed with judges, lawyers, and support staff who have been trained to deal with gender-based violence and other gender sensitive issues, making the court environment more accessible and less intimidating for women.

India has made some strides in this direction with the establishment of Fast Track Courts for sexual assault and domestic violence cases, but these courts often face delays and resource constraints. Expanding the network of gender sensitive courts across the country, particularly in rural and semi urban areas, would ensure that more women can access justice without the fear of delays or institutional bias. Moreover, ensuring that these courts are staffed with judges and lawyers trained in gender sensitivity would help make the legal process less intimidating for women.

### **Brazil: Community Paralegal Models**

In Brazil, community paralegals play a significant role in providing legal aid, particularly in marginalized and rural areas where access to formal legal institutions is limited. These paralegals are trained in basic legal principles and work within their communities to offer advice, mediate disputes, and assist individuals in navigating the legal system. This model has proven particularly effective in reaching women, who often face barriers to accessing formal legal institutions due to cultural norms or geographic isolation.

India, with its vast and diverse population, could benefit from adopting a similar community paralegal model, particularly in rural areas where women are less likely to approach formal legal institutions. Training local women as paralegals could not only provide a source of legal support but also help build trust within communities where formal legal systems are viewed with suspicion. These community paralegals could act as a bridge between women and the formal legal system, ensuring that more women are able to access legal aid.

## **Bangladesh: Legal Aid for Women and Rural Outreach**

Bangladesh offers a strong model of community based legal aid, particularly in rural areas. The country's Community Legal Services (CLS) program, funded by the UK's Department for International Development (DFID), focuses on providing free legal services to women in rural and marginalized communities. The CLS program uses paralegals, community mediators, and local NGOs to deliver legal aid, ensuring that women can access legal services without needing to travel to urban centres. The program also focuses on raising awareness about legal rights, which has been instrumental in empowering women to seek justice.

India could learn from Bangladesh's success in creating a legal aid system that is deeply embedded within local communities. By partnering with local NGOs, women's groups, and community leaders, India could strengthen its legal aid outreach, particularly in rural and tribal areas. Such partnerships would also help overcome cultural barriers that often prevent women from seeking legal recourse, as these organizations would be more attuned to local customs and sensitivities.

### **Statistical Data on Legal Aid and Barriers**

#### **National Legal Services Authority (NALSA) Data**

The National Legal Services Authority (NALSA), which is responsible for implementing free legal aid programs in India, reports on the beneficiaries of legal aid. As of 2022, NALSA reported that 24.1 million people had benefitted from legal aid services in India. However, only a small proportion of these beneficiaries are women. NALSA's 2019<sup>4</sup> report highlighted that the majority of women seeking legal aid were victims of domestic violence, but many more women remained outside the legal aid system due to barriers such as social stigma, lack of awareness, and inadequate institutional support.

**Domestic Violence Cases:** Of the legal aid beneficiaries, 20% of cases were related to domestic violence under the Protection of Women from Domestic Violence Act, 2005.

**Geographic Disparities:** In states like Uttar Pradesh and Bihar, where patriarchal norms are deeply entrenched, women comprised less than 15% of legal aid beneficiaries, whereas states like Kerala and Tamil Nadu showed higher representation, with 35-40% of legal aid users being women.

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<sup>4</sup> NALSA Annual Report (2019-2022), <https://nalsa.gov.in>

Data from the Ministry of Women and Child Development

The Ministry of Women and Child Development (MWCD) conducted a survey in 2020<sup>5</sup> focusing on legal support services for women. According to the survey:

60% of rural women were unaware of free legal aid services.

70% of women reported that they would not pursue legal action due to economic dependency on their spouse or family members.

In cases of domestic violence, nearly 40% of women who approached the police for legal assistance were not informed of their right to free legal aid under the Legal Services Authorities Act.

National Crime Records Bureau (NCRB) Data

The National Crime Records Bureau (NCRB)<sup>6</sup> provides detailed crime statistics, including data on crimes against women, many of which involve legal aid issues:

**Domestic Violence Cases:** In 2020, more than 4,05,861 cases of crimes against women were reported. Many women in these cases sought legal redress but faced significant delays and biases in the judicial process.

**Sexual Violence Cases:** NCRB's 2019 report showed that only 30% of sexual assault survivors had access to legal aid, highlighting the gender disparity in legal representation.

**Dowry and Property Disputes:** More than 30% of dowry related disputes remained unresolved due to the victim's lack of access to affordable legal representation.

### **Increasing Women's Representation in Legal Institutions**

One of the critical factors that enhance the effectiveness of legal aid systems for women is the representation of women within legal institutions. Countries like Canada and South Africa have made significant progress in increasing the number of female judges, lawyers, and legal aid workers, which has made the legal environment more accessible and supportive for women seeking justice. In contrast, India's legal profession remains male dominated, particularly in rural areas. The lack of female lawyers and judges can deter women from seeking legal aid, especially in cases involving sensitive issues such as domestic violence or sexual assault.

To address this, India could implement policies that encourage more women to enter the legal profession, particularly in areas like family law, criminal law, and human rights. Increasing the number of female legal aid lawyers, especially in rural legal aid clinics, would create a more

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<sup>5</sup> MWCD, Survey on Legal Aid for Women (2020), <https://wcd.nic.in>

<sup>6</sup> National Crime Records Bureau Report, 2020, <https://ncrb.gov.in>

supportive environment for women and help address the gender specific barriers they face in accessing justice.

### **Recommendations for Strengthening Legal Aid for Women in India**

To enhance access to legal aid for women in India, several policy reforms and institutional changes are necessary. First, legislative reforms should focus on strengthening the Legal Services Authorities Act, 1987 with specific provisions to mandate gender sensitivity in legal aid delivery. Additionally, the budget allocation for legal aid, particularly for women in rural and marginalized communities, needs to be increased to ensure that services are adequately funded.

Institutional reforms should focus on the creation of specialized legal aid clinics for women, particularly those dealing with domestic violence, sexual harassment, and family law issues. Increasing the number of female legal professionals and judges through affirmative action measures would also help create a more supportive environment for women seeking legal aid. Training and sensitization programs for legal aid providers, police officers, and judicial staff are essential to addressing the gender biases that often deter women from seeking legal help. National legal literacy campaigns, conducted in collaboration with civil society organizations, should be implemented to raise awareness among women about their legal rights and the availability of free legal aid services.

Finally, the use of technology can significantly enhance access to legal aid. Virtual legal aid platforms and mobile applications can provide women in remote areas with legal advice and assistance, bypassing some of the logistical challenges associated with accessing traditional legal services.

### **Conclusion**

In conclusion, while India has made significant strides in establishing a legal framework for providing legal aid to women, significant barriers remain in terms of cultural norms, economic dependency, institutional biases, and procedural delays. By adopting a gender sensitive approach and learning from global best practices, India can make its legal aid system more inclusive and effective. This research underscores the need for a holistic approach, integrating legal aid with social and economic support systems to ensure that women across India have

equal access to justice.

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**<sup>i</sup> References**

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Legal Aid Ontario, Canada

