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# ANALYSING THE EFFICIENCY OF FREE LEGAL AID IN CRIMINAL CASES

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## ABSTRACT

*It is very difficult for poor people to avail legal advice. Many people in India are suffering a lot to defend themselves in legal matters due to the lack of proper legal help. Many undertrial prisoners are not able to come out from prisons because they can not hire lawyers to help them in quickly getting bail. These all issues show that free legal aid has to be provided to the needy people so that they can avail equal access to justice. A mechanism for legal aid has already been made in India but still the supposed goals are not achieved. The legal aid system requires various reforms in India because the existing legal aid laws, policies and schemes are neither perfect nor efficiently implemented in all over India to provide equal access for justice to all.*

*This research paper analyses the efficiency of the Indian legal aid system in providing justice in criminal cases. It focuses on how accused and undertail avail legal aid. Doctrinal method of research has been followed to analyse literary sources. The objective of this paper is to analyse the methods to provide proper access to justice, to analyse the concept of legal aid in securing equal access to justice, to analyse the evolution of the concept of legal aid in India, to analyse the importance of legal aid education in law colleges, to explore institutional practices of legal aid as mandated by the Bar Council of India, to analyse the laws, policies and schemes related to legal aid in India, to analyse the status of implementation of legal aid policies, to examine the judgements of courts regarding legal aid, to analyse the problems caused without the availability of legal aid to the needy people, to analyse the shortcoming and loopholes in the Indian system of legal aid and to suggest the measures for improvement.*

**KEYWORDS:** *Legal aid, Article 39A, Free legal aid as a Directive Principle of State Policy, The Legal Services Authorities Act 1987, National, State & District Legal Services Authorities,*

*Section 304 of CrPC, Section 341 of the BNSS 2023.*

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## **1- INTRODUCTION**

### **1.1- MEANING OF LEGAL AID**

Access to justice has been declared as a fundamental right by the Constitutional Bench of the Supreme Court (SC) of India<sup>3</sup> and this right is secured to every citizen by Article 14<sup>4</sup> and Article 21<sup>5</sup> of the Constitution. Availability of affordable legal services makes all people to access justice equally and the option of free legal aid should also be available for those people who can not afford lawyers to get legal advice and to be represented by them in legal cases. Aiding a person with legal services is called providing "legal aid" and this term is generally used to provide free legal services to a person who can not afford an advocate. "*Legal Service includes rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or Tribunal and giving of advice on any legal matter.*"<sup>6</sup> Though India has made various frameworks for providing legal aid to the needy people but still there are a lot of problems in the real implementation. Due to the lack of legal aid, many people are not able to file cases and get the required justice. Due to lack of legal aid, many accused fail to avail bail and they remain trapped in prisons for a long time. As per the Prison Statistics India-2022 Report, released by National Crime Records Bureau on 01.12.2023, there are 4,34,302 undertrial prisoners in the Country as on 31.12.2022.<sup>7</sup> Similarly there are many instances in which poor people are not able to get legal remedies because they can't afford lawyers to represent them. It has to be analysed what measures can be taken in modern times to make free legal aid available to all needy people. It has to be checked whether there are any problems in laws or whether the lawyers are deliberately not willing to provide legal aid or whether there are some other reasons. By analysing the shortcomings and loopholes, a reform can be brought in the current system of legal aid. There is also a requirement to increase the focus on legal aid education in law colleges in India.

## **2- ACCESS TO JUSTICE THROUGH LEGAL AID IN INDIA**

In India, providing legal aid is one of the Directive Principles of State Policy. Article 39A provides for:

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<sup>3</sup> Anita Kushwaha vs. Pushap Sudan, (2016) 8 SCC 509.

<sup>4</sup> The Constitution of India, 1950, Art.14.

<sup>5</sup> The Constitution of India, 1950, Art.21.

<sup>6</sup> The Legal Services Authorities Act, 1987 (No. 39 of 1987), s.2(1)(c).

<sup>7</sup> Prison Statistics India-2022 (National Crime Records Bureau, 2023).



**"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 by reason of economic or other disabilities."<sup>8</sup>

The idea behind providing legal aid is to provide equal opportunity to everyone for equal justice. The State has an aim to provide affordable and free legal aid to the needy people. There are many people who can't afford lawyers, in that situation the system of free legal aid is quite commendable. For bringing the concept of legal aid into reality, the government has framed required laws and provided various schemes through which the needy people can be benefited. For example, the concept of legal aid as a DPSP comes into existence-

- through section 304 of CrPC<sup>9</sup> (and section 341 of the BNSS, 2023)<sup>10</sup>,
- through the Legal Services Authorities Act,<sup>11</sup>
- as well as the Bar Council of India through its Rules has made it compulsory to establish legal aid clinics in every institution imparting legal education in India.

If the financial background of a person hinders him from affording legal services then the principle of "equal access to justice" allows that person to avail free legal aid. The government has been directed to fulfil this responsibility by providing free legal aid to the needy people. For fulfilling this responsibility, the Legal Services Authorities Act of 1987 was brought to create authorities to manage legal aid and to extend free legal services to the needy people.

## **10 THROUGH THE LEGAL SERVICES AUTHORITIES ACT, 1987**

For enforcing the framework of legal aid, a structure from national to district levels has been made by the Legal Services Authorities Act of 1987:

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<sup>8</sup> The Constitution of India, 1950, Art.39A.

<sup>9</sup> The Code of Criminal Procedure, 1973 (Act No.2 of 1974), s.304.

<sup>10</sup> The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No.46 of 2023), s.341.

<sup>11</sup> The Legal Services Authorities Act, 1987 (Act No.39 of 1987).

- **NALSA (National Legal Services Authority):** NALSA which is headed by the Chief Justice of India (CJI) is a national level body,
- **SLSAs (State Legal Services Authorities):** Functioning in each state, led by the Chief Justice of the respective High Court.
- **District Legal Services Authorities (DLSA):** Established in every district, responsible for implementing legal aid programs at the ground level.

### Who is Eligible for Legal Aid?

According to Section 12<sup>12</sup> eligibility of a person will be approved if that person is a-

- Persons belonging to Scheduled Castes and Scheduled Tribes
- Women
- Children
- Victims of trafficking
- Persons with disabilities
- Industrial workers
- Agricultural workers
- Victims of disasters
- Persons in custody and undertrial prisoners

Scope of Legal Services Provided  
Legal aid encompasses a broad range of services, including:

- **Legal advice and counseling:** Lawyers offer guidance on legal issues and potential courses of action.
- **Representation in court:** Advocates appear on behalf of eligible persons in court proceedings, both civil and criminal.
- **Drafting legal documents:** Assistance is provided with drafting petitions, affidavits, and other legal documents.
- **Paralegal aid:** Trained paralegals assist lawyers and offer basic legal services.
- **Lok Adalats:** These are alternative dispute resolution forums where disputes are settled amicably.

### How to Apply for Legal Aid

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<sup>12</sup> The Legal Services Authorities Act, 1987 (Act No.39 of 1987), s.12.



Individuals can approach the nearest DLSA office to apply for legal aid. The application process is generally simple and requires minimal documentation, such as proof of income and identity.

### Challenges and the Road Ahead

Despite significant strides, legal aid in India faces challenges:

- Lack of awareness: Many people remain unaware of their right to legal aid and the availability of services.
- Shortage of lawyers: The lawyer-to-population ratio in India is skewed, making it difficult to cater to the vast demand for legal aid.
- Infrastructure and funding constraints: DLSAs often lack adequate resources and infrastructure to effectively implement legal aid programs.

Legal aid is a critical pillar of a just and equitable society. By ensuring access to legal services for all, India strengthens the rule of law and empowers its citizens. Continued efforts are needed to raise awareness, expand the reach of legal aid programs, and bridge the gap between legal needs and available resources.<sup>13</sup>

## **3- Legal Aid in Indian Criminal Justice**

The Indian justice system strives to be a haven for the innocent and a deterrent for the guilty. However, navigating the complexities of criminal law can be daunting, especially for those facing financial limitations. This is where legal aid steps in, ensuring that economic disparity doesn't bar access to a fair trial in criminal cases.<sup>14</sup>

### The Legal Framework and Your Right to Fight Back

The right to legal aid finds its roots in Article 39A of the Indian Constitution, guaranteeing that economic constraints don't hinder the pursuit of justice. The Legal Services Authorities Act of 1987 translates this right into action. This act establishes a nationwide network of Legal Services Authorities (LSAs) – National, State, and District – responsible for providing free legal assistance in criminal matters.

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<sup>13</sup> Sunil Deshta, *Lok Adalats in India: Genesis and Functioning* 126 (Deep & Deep Publications, New Delhi,

1995).

<sup>14</sup> Dr. Taru Mishra and Janmejay Singh, "Importance of Legal aid in the way of justice In India" Vol.13 No.12(VI) *Journal of Education Rabindra Bharati University* 151-160 (2021).



### Who Qualifies for Legal Aid in Criminal Cases?

Section 12<sup>15</sup> of the Act lays out the eligibility criteria. Individuals facing criminal charges can seek legal aid if they belong to any of the following categories:

- **Vulnerable Groups:** This includes people from Scheduled Castes and Tribes, women, children, and victims of trafficking.
- **Marginalized Sections:** Agricultural workers, industrial workers, and persons with disabilities are also entitled to legal aid.
- **Those Facing Hardship:** Under-trial prisoners, victims of disasters, and individuals with limited financial means qualify for assistance.

### What Kind of Legal Aid is Available in Criminal Cases?

The legal aid system offers a comprehensive range of services in criminal proceedings:

- **Pre-Arrest and Remand Stage:** Lawyers can advise on legal rights during arrest and detention, ensuring procedures are followed correctly.
- **Trial Stage:** Legal aid provides representation by an advocate in court, safeguarding your interests throughout the trial.
- **Appellate Stage:** If needed, legal aid can extend to appeals against lower court judgements.
- **Paralegal Support:** Trained paralegals assist lawyers and offer basic legal guidance in navigating the criminal justice system.

### Accessing Legal Aid: A Simple Process

To avail of legal aid, individuals can approach their nearest District Legal Services Authority (DLSA) office. The application process is designed to be straightforward, typically requiring proof of identity, residence, and income documents.

### Challenges and the Path Forward

While legal aid plays a vital role in ensuring a fair trial for all, some challenges persist:

- **Awareness Gap:** Many remain unaware of their right to legal aid and the services available. Public awareness campaigns are crucial to bridge this gap.
- **Limited Resources:** The lawyer-to-population ratio in India creates strain on the system. Increasing lawyer participation and expanding paralegal services are potential solutions.

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<sup>15</sup> The Legal Services Authorities Act, 1987 (Act No.39 of 1987), s.12.



- Funding Constraints: DLSAs often face resource limitations. Continued government support and exploring alternative funding mechanisms are necessary.

Legal aid serves as a vital equalizer in the Indian criminal justice system. By empowering individuals with legal representation and guidance, it ensures that justice is not solely determined by financial standing. Continued efforts to enhance awareness, expand resources, and streamline processes will be instrumental in strengthening this vital pillar of a fair and just criminal justice system.<sup>16</sup>

#### **4-Indian Judgments Upholding Legal Aid for Criminals**

The Indian judiciary has consistently championed the right to legal aid for those accused of crimes, recognizing it as an integral element of a fair trial. This article explores key judgments that have cemented this right and its importance in the Indian criminal justice system.

Landmark Judgments:

- ***M.H. Hosseini vs. State of Madhya Pradesh***<sup>17</sup>: This Supreme Court judgment established the right to free legal aid as an essential component of Article 21 (Right to Life and Liberty) and Article 39A (Free Legal Aid) of the Constitution. The court held that denying legal aid to an accused person could render the trial unfair, potentially leading to a miscarriage of justice.
- ***Keshav Singh vs. State of Rajasthan***:<sup>18</sup> The Supreme Court reiterated the importance of legal aid in this case. It emphasized the duty of the State to provide legal representation to ensure a fair trial, particularly for those who cannot afford it.
- ***Kartar Singh vs. State of Punjab***:<sup>19</sup> Highlighting the practical implications, this Supreme Court judgment directed trial courts to inquire about the financial status of the accused and arrange for legal aid if necessary.
- ***Nano vs. State of Chhattisgarh***:<sup>20</sup> The apex court, in this case, emphasized the need for legal aid at all stages of the criminal justice process, not just during the trial. This includes assistance during pre-arrest, remand, and appeal stages.

These judgments underscore the following key points:

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<sup>16</sup> S.Muralidhar, *Law, Poverty and Legal Aid: Access to Criminal Justice* 2-15 (Lexis Nexis Butterworths, 2004)

<sup>17</sup> *M.H. Hosseini vs. State of Madhya Pradesh*, AIR 1978 SC 1541

<sup>18</sup> *Keshav Singh vs. State of Rajasthan*, AIR 1983 SC 477

<sup>19</sup> *Kartar Singh vs. State of Punjab*, 1994 Supp (SCC) 671

<sup>20</sup> *Nano vs. State of Chhattisgarh*, (2014) 8 SCC 1

- Legal aid is not merely a welfare measure; it is a fundamental right crucial for a fair trial.
- The State has a positive obligation to ensure accused persons, especially those from disadvantaged backgrounds, have access to legal representation.
- Effective legal aid safeguards against wrongful convictions and promotes the integrity of the criminal justice system.

The unwavering support of the Indian judiciary has played a pivotal role in solidifying the right to legal aid for those accused of crimes. These landmark judgments serve as a constant reminder that access to justice should not be a privilege reserved for the wealthy, but a fundamental right for all.<sup>21</sup>

India's legal system recognizes that a fair trial is not just about guilt or innocence, but also about ensuring equal access to justice. Legal aid serves as a crucial equalizer, particularly for accused and undertrial prisoners (UTPs) who often face financial constraints and limited understanding of the legal process.

#### Benefits for Accused and Undertrial Prisoners:

- **Securing a Fair Trial:** Legal aid provides accused persons with legal representation by an advocate. This ensures their rights are protected throughout the proceedings, from pre-arrest to trial and potential appeals. A lawyer can:
  - Challenge unlawful arrest or detention.
  - File bail applications, increasing the chance of release while awaiting trial.
  - Prepare a strong defense strategy and present arguments effectively in court.
  - Navigate complex legal procedures and ensure adherence to due process.
- **Informed Decision-Making:** Legal aid empowers accused persons to make informed decisions about their case. Lawyers can explain the charges, potential consequences, and available plea bargains, allowing for a more strategic approach.
- **Reduced Stress and Anxiety:** Facing criminal charges can be overwhelming. Legal aid provides access to legal counsel who can offer guidance, clarify legal uncertainties, and address concerns, easing the stress of navigating the criminal justice system.

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<sup>21</sup> Akarshita Singh, "Legal Aid in India: current scenario and future challenges", *Manupatra*, December 11, 2023,



- Improved Outcomes: Studies suggest that accused persons with legal representation are more likely to receive a fair trial, potentially leading to reduced sentences or even acquittals.

UTPs Benefit Specifically From:

- Expedited Trials: Legal aid can help ensure a speedy trial, reducing the time undertrials spend in detention. This minimizes the negative impact of incarceration on their lives and families. Speedy trial is very essential for quick justice and this right is secured by Article 21<sup>22</sup> of the Indian Constitution.<sup>23</sup>
- Rehabilitation and Reintegration: Legal aid can assist UTPs in understanding their legal options, including plea bargains or alternative sentencing, which can pave the way for rehabilitation programs and a smoother reintegration into society.

Challenges and Overcoming Them:

- Awareness Gap: Many accused and UTPs remain unaware of their right to legal aid and how to access it. Increased public awareness campaigns and information dissemination within prisons are crucial.
- Resource Constraints: The lawyer-to-population ratio in India creates strain on the legal aid system. Encouraging pro bono work by lawyers and expanding paralegal services can bridge this gap.
- Funding Limitations: District Legal Services Authorities (DLSAs) often face resource limitations. Continued government support and exploring alternative funding mechanisms are necessary.

Legal aid serves as a beacon of hope for accused and UTPs in India. By providing them with a voice in the legal system, it strengthens the pursuit of justice and ensures that financial limitations do not become a barrier to a fair trial. Continued efforts to address the challenges and expand the reach of legal aid are essential to ensure a more just and equitable criminal justice system for all.

## **5- CONCLUSION AND SUGGESTIONS**

The Indian legal aid system strives to bridge the gap between access to justice and financial standing. However, for undertrial prisoners (UTPs), navigating its complexities can be

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<sup>22</sup> The Constitution of India, 1950, Art.21.

<sup>23</sup> *Hussainara Khatoon v. Home Secretary, State of Bihar (I)* AIR 1979 SC 1360; *Kartar Singh v. State of Punjab* (1994) 3 SCC 569.

daunting. This article explores potential reforms to ensure UTPs reap the maximum benefits from legal aid.

#### Enhancing Awareness and Accessibility:

- **Bridging the Information Gap:** Disseminating information on legal aid rights through prison workshops, posters, and informative booklets in local languages can empower UTPs to seek legal assistance.
- **Streamlining Application Process:** Simplifying application procedures and establishing legal aid kiosks within prisons will make it easier for UTPs to access legal aid.
- **Leveraging Technology:** Utilizing video conferencing technology can connect UTPs with lawyers remotely, overcoming geographical limitations.

#### Expanding Services and Expertise:

- **Specialization in UTP Cases:** Encouraging lawyers to specialize in UTP cases can build expertise in handling issues specific to pretrial detention.
- **Paralegal Support System:** Expanding paralegal services can provide UTPs with initial legal guidance, case management assistance, and support in interacting with lawyers.
- **Focus on Expedited Trials:** Legal aid should prioritize strategies for ensuring speedy trials, minimizing the time UTPs spend in detention.

#### Strengthening Institutional Mechanisms:

- **Improved Funding Mechanisms:** Exploring alternative funding sources, such as corporate social responsibility initiatives or user fees from those who can afford them, can supplement government support for legal aid programs.
- **Performance Monitoring and Evaluation:** Regularly monitoring the effectiveness of legal aid services in prisons and conducting outcome-based evaluations can help identify areas for improvement.
- **Collaboration with NGOs:** Partnering with NGOs specializing in prison reform and legal aid can provide additional resources and expertise.

#### Benefits for UTPs:

- **Reduced Pre-Trial Detention:** Streamlined legal aid can expedite trials, minimizing the time UTPs spend incarcerated before their guilt or innocence is determined.

- Improved Legal Representation: Increased access to specialized lawyers and paralegals will ensure UTPs receive tailored legal advice and representation throughout the pre-trial process.
- Enhanced Rehabilitation Opportunities: Legal aid can assist UTPs in exploring plea bargains or alternative sentencing options, facilitating access to rehabilitation programs and a smoother reintegration into society.

By implementing these reforms, the legal aid system can become a more robust and accessible support system for UTPs in India. Increased awareness, specialized services, and stronger institutional mechanisms will empower UTPs to navigate the legal process effectively, ensuring a fairer and more just criminal justice system.

#### SUGGESTIONS

- It has become very important to analyse whether legal aid can be recognised as a fundamental right. Very little research work has been done on this issue and in modern times it has become very necessary to impart justice by providing legal aid to everyone.
- The poor status of legal aid education in law colleges is also a very concerning issue.
- Lawyers are willing to earn big money and they don't want to get involved in imparting legal aid to the needy people.
- More research is required to be conducted so that good and valuable legal aid education can be provided in law colleges and students can be motivated to pursue career in the field of legal aid.

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