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# **ACCESS TO FREE JUSTICE: A CRITICAL ANALYSIS OF ARTICLE 39 A OF THE CONSTITUTION OF INDIA**

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## **Introduction**

### ***1.1. Introductory Remark***

Legal Aid Services are recognized as indispensable part of human rights worldwide. International Laws, instruments and treaties along with local national law have shaped the present status of Legal Aid Services. Judiciary has always been very critical and vocal for protecting the rights of the common people. Protection of rights is not possible for those who are unable to afford a private legal practitioner for the protection of their rights, titles and interests. Therefore, right to Counsellor access has time and again been made a prominent matter to comply with. Easy, economic and speedy accessibility to justice for all is a Fundamental Right that needs to be fulfilled in letter and spirit. Right to access to justice of downtrodden and marginalized sections of the society needs special care and efficient Legal Aid Services is a first step towards fulfilment of this divine goal. Effective justice system contributes to sustainable development and inclusive growth. The question that needs special attention is that despite being so many statutory enactments on the subject available, how far the laudable objectives enshrined under these statutes have been achieved? Effective, efficient, economic and speedy justice which is the long-cherished vision of our forefathers is still a distant dream. Present paper is an attempt to investigate the main issues behind it. Researcher has tried to analyze the falling standard of Legal Aid Services and decreasing trust of the beneficiary over it. Data has shown that there exists a wide gap between the profession skills of Private Legal Practitioners and Legal Aid Counsels ( LACs). Legal Aid Counsels severely lack sincerity, commitment and accountability. This is the main reason behind dissatisfaction of the beneficiaries over Legal Aid Counsels and Legal Aid Services.

Present research conducted in the state of Delhi is a serious attempt to understand the problems in carrying out the mandate of free legal aid in an effective and speedy manner. Researcher has

analysis's role, responsibility, accountability, accessibility and commitment of Legal Aid Practitioners towards the beneficiaries. Three major parameters of commitments, professionalism and competency of the Legal Aid Counsels have been investigated to see the connection between low quality of services provided by Legal Aid Counsel and diminishing trust of Beneficiaries over Legal Aid Services.

On account of severe COVID threat challenges to conduct offline research, researcher has managed to interview 115 beneficiaries of legal aid, 10 judicial officers, 15 Legal Aid Counsels and 35 women beneficiaries from Delhi District Courts. This investigation has not only been Carried out on existing legal aid provisions but also the practical aspects of experience of beneficiaries so that the research may facilitate the strengthening of program by taking proper steps in right direction. Multiple variables have been tested in the research to test the hypothesis.

### **1.2. *Statement of the Problem***

There are *pro bono* Legal Aid Services but their efficiency and credibility can be tested on the touchstone of people's faith in these services. Are people comfortable reaching out to these services? Though, free legal service is provided in many forms ranging from drafting of pleadings, filing written statements, arguing the case in trials, appearance for the undertrials, consultations in civil as well as criminal cases. Despite all these services, people are reluctant to avail free Legal Aid Services. Various researches show that incompetency and insincerity of these legal practitioners has been the main reason of loss of common people in free Legal Aid Services.

### **1.3. *Objectives of the Research***

Ground reality is totally different from the high profile promises and provisions made under various Acts and schemes. After going through extensive literature available on the subject, it becomes clear that Legal Aid Services are losing their credibility and efficiency. Legal Aid Counsels have really not fulfilled the legitimate expectations of the beneficiaries. No feeling of accountability is the main reason behind the insincerity and nonprofessional attitude of these legal practitioners. Research is carried out to verify these findings and to achieve following objectives:

- (i) To analyze various existing provisions and schemes relating to free Legal Aid Services.
- (ii) To find out the lacunae in the existing provisions and schemes.

- (iii) To find out the reason of shattered faith of people in availing Legal Aid Services.
- (iv) To critically examine the availability, sincerity, competency and efficiency of legal aid councils.
- (v) To find out scope of improvement in Legal Aid Services operations and the effective measures to be taken.

#### **1.4. Scope and Significance**

Functioning of the current legal aid system is not satisfactory as it is not fulfilling the Bonafede requirements and expectations of the beneficiaries. Despite being free of cost services given by the legal practitioners, people in majority are reluctant to approach them for getting such services. Even after allocation and spending big amount of money for the proper functioning and expansion of Legal Aid Services, dream of equal justice to all is not achieved due to unsatisfactory performance of its council. Significance of present research lies in finding out the answers to following issues:

- (i) What measures should be taken to make the Legal Aid Services people friendly and efficient?
- (ii) What measures should be taken to restore the faith of marginalized and down trodden strata of society to avail Legal Aid Services?

Researcher is of firm belief that this research would certainly add something potential to the existing pool of knowledge and thus champion the cause of maintaining the standard of Legal Aid Services.

Research shall be limited to find out why Legal Aid Services is losing its credibility and what needs to be done to improve the situation?

#### **1.5. Research Hypotheses and Questions**

Functioning of the current legal aid system is not satisfactory as it is not fulfilling the bonafide requirements and expectations of the beneficiaries. Despite being free of cost services given by the Legal practitioners, people in majority are reluctant to approach them for getting such services. Even after allocation and spending big amount of money for the proper functioning and expansion of Legal Aid Services, dream of equal justice to all is not achieved due to unsatisfactory performance of its council. Present research is undertaken to answer the following issues:

- (i) What measures should be taken to make the Legal Aid Services people friendly and efficient?
- (ii) What measures should be taken to restore the faith of marginalized and down trodden strata of society to avail Legal Aid Services?

The researcher by the proposed hypothesis, has analysed the relationship between independent and dependent variables. Independent variables in the research are commitment, sincerity, efficiency, easy availability, accessibility, accountability and professionalism of the Legal Aid Counsels . Independent variables of the research are quality provided under Legal Aid Services and deteriorating trust of the beneficiaries over Legal Aid Counsels and Legal Aid Services. The present research shall test the following hypothesis:

- (i) Incompetence, insincerity of legal aid practitioners is the main reason behind the lack of trust amongst beneficiaries of Legal Aid Services.
- (ii) Lack of commitment and accountability in legal aid councils has led to the beneficiaries choosing private counsel.
- (iii) Not availing Legal Aid Services and incapability to engage private services by the beneficiaries have led to denial of justice to the beneficiaries by the infringement of their right to access to justice to all.

### **1.6. Review of Literature**

Review of Literature is an acute analysis of existing pool of knowledge and finding the gaps within it . Main objective is to verify the existing knowledge or old facts or to develop something new. It may be a preface to the primary research or the rationale for engaging in such primary research. Generally, it means to analyse critically a segment of published body of knowledge through summary, classification and comparison of prior research studies or theoretical articles.

Edgardo Buscaglia, *Investigating the Links Between Access to Justice and Governance Factors: An objective Indicators Approach* (Global Program Against Corruption, Research and Scientific Series, UN Office for Crime and Drug Control, 2001), in this United Nations affiliated paper, major study is done to find out the gaps between access to justice and State's inaction. Rule of Law puts heavy emphasis upon the inalienable right of easy and equal access to justice to all,

including the poor, destitute and the most vulnerable sections of society. Justice should be accessible, impartial, fair and non-discriminatory. Various factors necessary for equal and impartial justice are independence of the judicial system incorporating the essential features of impartiality, integrity, objectivity and accountability must be strengthened at grassroot level.

Farzana Akhtar, *The standard of assistance from legal aid lawyers: an Indian perspective* (Indian Law Review, 2021), Indian legal aid providers have not been able to provide their services in substantial compliance of International human rights standards and therefore, the system collapses corroding the trust of beneficiaries over their services. We are following human rights perspectives in procedural form only.

Dr. Pratiksha Baxi, *Access to Justice and Rule-of (Good) Law: The Cunning of Judicial Reform in India* (working paper, commissioned by the Institute of Human Development, New Delhi on behalf of the UN Commission on the Legal Empowerment of the Poor, May 2017), has explored the means of the politics of judicial reform and how it expands state power when aligned to access to justice. Promotion of assurance of protection of rights of individuals specifically that of the poor in a legal system is a decisive way to reduce poverty and a strategic tool to foster respect for law and government.

S. P. Sathe, *Crisis of Indian Legal System* (Economic and Political Weekly, August, 1983), has said that people desiring for change but unable to initiate it which gives birth to origin of crisis. Crisis arises due to incapacity to act. Indian Legal System which follows its legacy from British Legal System has failed to transform and cater to the needs of a democratic society.

Upendra Baxi, *The Crisis of the Indian Legal System* (Cambridge University Press, 2011), has discussed the challenges and viable measure to improve and strengthen the Indian legal system. Our legal system has many inherent shortcomings like slow and complex process which reduces the trust of common folks in justice delivery system.

Upendra Baxi, *Dual Standard of Justice since Globalisation* in his (available at <https://www.bhopal.net/dual-standards-of-justice-since-globalisation-prof-upendra-baxi/>), has depicted the candid state of affairs in a regime of poverty and its effect upon access to justice. He mentioned list of cases of the Supreme Court widening the gap between globalised and de-globalised people.

Upendra Baxi, *Access to justice in a Globalised Economy: Some Reflections* (IDS Bulletin, 2001), has put forward his views very succinctly regarding the advent of globalisation and its effects upon the reach of people to get justice. Though we are living in a border less world, still we need to cross many borders to get justice.

The UN Commission, *The Legal Empowerment of the Poor* (Cambridge University Press, 2005), as the first global initiative to focus specifically on the link between exclusion, poverty and law strongly believes that if governments want to remove or reduce poverty, they need to ensure to all its citizens, especially the poor, a powerful legitimate stake to all in the protections of rights given by the legal system, which definitely is not the entitlement or privilege of a handful but a protected right of all persons.

Workshop Background Paper *Understanding Effective Access to Justice* (Open Society Justice Initiative, 2016), herein it is said that effective and efficient justice systems in the world contribute to an inclusive growth to all and foster sustainable development goals. An effective justice system is responsible for better employment, better living conditions and more government accountability.

### **1.7. Research Methodology**

In order to answer the research problem, to attain the objectives and to test the hypothesis, the researcher has conducted the doctrinal and empirical research both. As far as doctrinal study is concerned, it has been done by critically examining the primary as well as the secondary sources of information on the given subject. Primary sources include the relevant provisions of the *Constitution of India*, *order 33 of the Code of Civil Procedure*, 1908, *The Legal services Authorities Act*, 1987, *section 304 of the Criminal Procedure Code*, 1973, *The National Legal Services Authority (Free and Competent Legal Services) Regulations*, 2010 and various International Instruments. For empirical purposes, researcher has interviewed four sets of respondents namely beneficiaries, Legal Aid Counsels, Judicial Officers and women who were entitled to free legal aid but not opted for it.

## **Scope of Legal Aid Services**

### **2.1. Introduction**

The first requisite of a democratic society with rule of law is that justice should be equal. What

does this equal justice mean? Whether it should be equally administered to all or all are equal in eye of law or there should be no discrimination while delivering justice. Infact, it is an amalgamation of various facets. “The notion of justice evokes the recognition of the rule of law, of the resolution of conflicts, of institutions that make law and of those who enforce it; it expresses fairness and the implicit recognition of the principle of equality”.<sup>1</sup>

Legal Aid Services is an essential component of justice. “Justice is the amalgamation of moral rightness based on ethics, rationality, law, natural law, fairness, religion and/or equity”.<sup>2</sup> Justice is a virtue which is the outcome of fair, impartial and a sound administration of law in modern society. It is the virtue of being just, which is in in alliance to reality and truth in manifesting opinions and in conduct depicts many qualities like fidelity, honesty, just behaviour and impartiality, fair and clear representation of facts without fear respecting merit or demerit.<sup>3</sup> *John Rawl* believes that justice is necessary as it establishes individuals equal rights and duties in the society and is an essential idea behind the existence of today’s societies and government.<sup>4</sup>

The word justice encompasses within itself various facets. It is the first virtue that constitution seeks to achieve to all its people.<sup>5</sup> Our Preamble talks about “social, economic and political justice” which is possible only when there is a just social order in the society wherein all the inequalities due to social, economic and political factors are done away with. This broad vision of justice cannot be achieved unless and until the State and the Judiciary both act complementary to each other by recognising, realising, protecting and strengthening the fundamental rights of the common masses and an effective forum to enforce them.

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<sup>1</sup> Arturo Carrillo and Annalise Nelson, Comparative Law Study and Analysis of National Legislation Relating to Crimes Against Humanity and Extraterritorial Jurisdiction, 46 GWILR 481 (2014).

<sup>2</sup> Richard J. Wilson, “Training for Justice: The Global Reach of Clinical Legal Education” 22 Penn St. Int’l L. Rev. 421 (2004).

<sup>3</sup> Upendra Baxi, “Access to justice in a Globalised Economy: Some Reflections” 32 *IDS Bulletin* 94 (2001).

<sup>4</sup> John Rawl, *A Theory of Justice* (The Belknap Press of Harvard University Press, Cambridge, 1971).<sup>5</sup> “Access, Development And Distributive Justice : Access Problems Of The Rural Population” available at: <https://www.jstor.org/stable/43950440> (last visited on July 5, 2021).

## 2.2. *Understanding Effective Access To Justice*

Access to justice and access to court are two different scenarios which together make a just society based on the principles of constitutionalism. Opportunities for securing justice can only be made viable if people feel comfortable to access courts. Access to justice is the most fundamental component of the rule of law. It enables everyone to have his/ her voice heard, their concerns noticed, exercise their rights, challenge policies of the government and discrimination or hold policy makers/decision-makers accountable on the very touchstone of constitutionality and legality. Rule of Law puts heavy emphasis upon the inalienable right of easy and equal access to justice to all, including the poor, destitute and the most vulnerable sections of society. Justice should be accessible, impartial, fair and non-discriminatory.

Various factors necessary for equal and impartial justice are independence of the judicial system incorporating the essential features of impartiality, integrity, objectivity and accountability must be strengthened at grassroot level.<sup>7</sup> In today's modern world, access to justice imply to have recourse to a quick, effective, efficient, affordable and satisfactory dispute settlement from a credible authorised forum.<sup>8</sup> The words access to justice presupposes a system which enables the people to get their valuable rights settled or resolve their claims and disputes. Thus equal accessibility to all socially as well as individually just results are the fulcrum of the right to equal justice. Technically speaking, access to justice is sort of a guarantee in the minds of general public to get justice through judicial or quasi-judicial institutions. It includes legal representation, adherence to basic human rights standards to be given in courts and a friendly legal system which does not seem alien or a burden to the general

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<sup>6</sup> Interview with Mr. Yahaya Al-Hassan, Senior Ex. Director, Legal Aid, Ghana, General News, August 14, 2009.

<sup>7</sup> Richard K. Gordon Jr. Jonathan M. Lindsay, "Law and the Poor in Rural India: The Prospects for Legal Aid" 5 *American University International Law Review* (1990).

<sup>8</sup> Robert Granfield, "The Meaning of Pro Bono: Institutional Variations in Professional Obligations among Lawyers" 41 *Law & Society Review* (2007).

(i) Free legal aid and assistance also include within its scope provision of rendering aid and advice to the beneficiaries so as to make them aware about the various welfare schemes, enactments and provisions.

### 2.3. ***Procedural Requirements for Applying for Legal Aid Services***

One who is in need of legal aid, but doesn't have ample financial resources to obtain the same, can very well approach the Legal Services Authority by giving a written application or filling up the prescribed form stating in brief the grievance for which one wish to seek legal aid.

Where applicant is illiterate, concerned officer of the legal services Committee/ Authority will record his oral submission and his thumb impression/ signature on that record. This record is treated as an application provided applicant verifies the given eligibility criteria for obtaining legal services.

*NALSA (Free and Competent Legal Services) Regulations, 2010*, stipulates that upon fulfilment of all the given requirements, a person can make an application under the Regulation 3 in the given specific prescribed format and may very well submit it before the designated authority. Where a person is unable to make an application on account of any disability like illiteracy or otherwise, it is the duty of the designated authorities to make some necessary arrangements for filing of such an application for availing Legal Aid Services.

### 2.4. ***Historical Background of Legal Aid Services***

In ancient history as per *Manusmriti*, king was supposed to administer justice to all equally without any bias based on the religion. Sanctity of administration of justice was of utmost importance and need to be preserved in social, economic and political dimensions of life. Medieval period was mostly dominated by Muslim rulers and therefore, Islamic Law was applied for adjudication of all matters or disputes brought before the court irrespective of religious views and belief of the parties involved therein. Mughal emperor Jahangir's justice was popularly known as *Jahangiri Nyaya* because of his fair treatment given to all.<sup>11</sup>

First and foremost legal aid movement is said to be appear in 1851, with the passage of an enactment in France to provide legal assistance to the poor. The genesis of *article 39 A*, that

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<sup>11</sup> Justice T .Mathivanan, "Legal Aid Issues, Challenges And Solutions: An Empirical Study", available at <http://www.hcmadras.tn.nic.in/legalaid-issues.pdf> (last visited on August 5, 2021).

unequivocally states about the State's constitutional obligation to secure access to justice with equal opportunity to all in a legal system. Equal opportunity becomes meaningful only when no person is denied justice owing to economic or financial constraints. *Articles 14 and 22(1)* provides for "equality before law" and "equal protection of laws" that promotes justice on a basis of equal opportunity to everyone, can be traced back to the year 1851 with the passage of a statute in France for providing legal services to the poor. New York United States saw its first such legal assistance to poor in 1876 started from New York City.

Indian Government also started dealing and addressing the questions regarding the legal aid provisions for poor in various conferences held by Law Commission and Law Ministers since 1952. Indian Government made some guidelines and framework for legal aid schemes in 1960. With respect to independent India, prior to 1976 there was no concept of official free legal aid. Bombay Legal Aid Society was the first one to propose the salutary idea of free legal aid to poor litigants. For the first time in 1949, a committee named The Committee on Legal Aid and Legal Advice in Bombay was set up under the pioneer chairmanship of honourable Justice P.N. Bhagwati. He also headed the Committee on Legal Aid and Advice formed in 1950 by Bombay Government. There were 2 tests suggested by the committee in order to determine the eligibility for legal aid:

- (i) *Prima facie* test,
- (ii) Means Test.

Justice *Bhagwati* is recognised as the pioneer of Legal Aid Programme in India. He adorned the Chairmanship of the Legal Aid Committee. This Committee constituted by the Government of Gujarat was intended to devise some measures to improve legal system for the poor. He worked relentlessly to promote legal aid programs and awareness in rural and remote areas. His contribution to the field has always been an inspiration for the generations to come.

As far as the *Law Commission of India* is concerned, it emphasised for the first time in its 14<sup>th</sup> Report published in 1958 on the concepts of free legal aid and equal justice to all. The Report emphasised that the constitutional mandate of equal opportunity to all to seek justice has no meaning if laws do not have any protection against this. Without having any active enactment for the same, we can never achieve the objective of accessing justice to all sections of society. Provisions for enabling a poor man to knock the gates of justice should be made in form of paying court fee, lawyer's fee, witnesses fee along with other incidental costs of litigation. The *Law Commission of India*, in its report of 1958 highlighted the importance of free legal aid as legal aid

programs that are intended to secure the interests of the poor, are the substantive issues and not mere petty issues of procedural law.

Access to justice and poverty are considered to be sworn enemies.<sup>12</sup> To study the same, a Committee for Legal Aid was appointed under the chairmanship of Justice *Krishna Iyer* in 1972 to study the relationship between law and poverty.<sup>13</sup> Main objective was to helping the socially and economically disadvantaged people to access justice and to mitigate the hurdles coming in their way to access justice. The main idea behind this is “to promote community and traditional justice systems that are relatively easily accessible to vulnerable groups, and to make them more compliant with Human Rights”.<sup>14</sup> Committee was set up to investigate all the aspects related to free legal aid and the targeted subject matter in an elaborative manner.<sup>15</sup> The Committee conducted empirical survey and submitted its report titled *Processional Justice to Poor*. Report said that the real legal system is one that enables law to reach the people and not *vice versa*.

Need of incorporation of new philosophy in light of prevailing socio economic conditions in India is must while evolving legal aid programs in India. It further observed that conventional legal service methods that are basically Court inclined and litigation oriented need to be evolved to meet the ever changing requirements and problems or issues of the poor section of the society. In 1976, again a Committee under the Chairmanship of Justice *P.N. Bhagwati* and Justice *Krishna Iyer* was constituted to suggest available resources of executing the report on legal aid. Report was submitted In 1977 titled *Public Juridicare Equivalent Equity and Social Equity*. The central purpose of the report was that it believed that we need a program which is suitable for India's need. Something that reflect western mentalities or goals couldn't be very effective in our country India as just few issues of the poor can be said to be legal issues. The

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<sup>12</sup> P. Sidhva, “Legal Aid in India: The Need for Strong Laws and High Minds”, 2 *Oxford Human Rights Hub Blog* (2012), available at <http://ohrh.law.ox.ac.uk/legal-aid-in-india-the-need-for-strong-laws-and-high-minds/> (last visited on August 2, 2021).

<sup>13</sup> Government of India, “Report Of The Expert Committee On Legal Aid: Processual Justice To The People”, (Department of Legal Affairs, May 1973).

<sup>14</sup> *Ibid.*

<sup>15</sup> T Zainulbhai, “Justice for All: Improving the Lok Adalat System in India”, 34 *Fordham International Law Journal* (2011).

### 2.6.1. *131<sup>st</sup> Law Commission Report, 1988*

There has been a steep moral downfall of legal profession. There is an imminent need to promote and strengthen the core quality of justice.<sup>19</sup> In every country, the job of legal professionals must be surveyed with regards to the established command as set out in *article 39A*. It is the main obligation of the State to see that the general set of laws promotes equity and equality on a premise of equivalent freedom. The job of legal professionals in fortifying organizational equity should be in confirmation with the objective hidden under *article 39A*. As such, in an adversarial legal framework, courts being the foremost flag bearer of strengthening of justice administration, legal professionals should strive hard to ensure the same. Thus, opportunity of getting justice ought not be denied to anyone on account of financial or different incapacities. Legal professional owes a duty to not let anyone walk away the corridors of justice purely due to monetary constraints. Similarly significant is the way that social incapacities ought not keep at bay litigants from getting equity of which legal services is a necessary and indivisible aide. The State, which has presented a syndication on this noble profession by allowing it to manage its own affirmation, capability for confirmation and be the controller of its own interior discipline, ought to so behave as bearing the cost of each office for getting justice. To release this commitment, legal profession should make its services accessible to those poor who in any case can't stand to pay the expense of their services.

Expenses as additionally their social incapacities should not come in their way to secure justice. In order to be successful every profession must develop its own ways, rules and regulations which also help it to promote the quality of services to be given. Especially in legal profession it is of imminent importance that such changes are brought in society through its services

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<sup>19</sup> Law Commission of India, “131<sup>st</sup> Report on the Role of Legal Profession in Administration of Justice” (August, 1988).

rendered which are in confirmation of the egalitarian goals. For these goals, we are committed both ways constitutionally and also as our prime policy goals. Keeping in mind these very aspects, the noble role of Legal profession must be made clear.

Another important aspect is building good lawyer – client relationship. In almost every profession, there will undoubtedly be a few people who can't keep up with the elevated expectation of the profession. At times, proof uncovers a corrupt situation in advocate- client relationship. It is not a sole criterion to denounce the whole profession. Though, this viewpoint can't be disregarded too. It is here the issue of credibility and responsibility of the professionals towards their clients. The heads of the Bar should show concern with the destiny of poor people and the impoverished and they must take up their cases for free. They should likewise take up the job of scrutinizing the credibility of people who don't keep up with high standards of professional norms. They should submit themselves to social review. It is an unreasonable to expect a litigant coming from rural or backward regions to get what is generally anticipated of his attorney and to gripe against that he feels cheated and from there on to indict his protest before the Bar Council. There must be a self-regulating mechanism to take *suo- moto* notice of an errant lawyer which does not require any formal complaint to take action. This is the greatest task to perform one's duties towards the profession as well as the general society. That is a difficult task. Responsibility can be given or by an automatic component. This must likewise remember an ill-advised or amateurish conduct before the court that would impede the overall framework.

One important factor for consideration before the Commission was to investigate the issue of floor and ceiling in fees chargeable by legal professionals. After considering the issue in detail, Commission was of the view that merely fixing the upper limit of fee charged cannot solve the problem *in toto* as there are bound to happen many persons in the society who cannot afford this prescribed fee limit and thus would face denial of justice. The fee is certainly going to be a barrier to seek justice.

While comparing legal services with health services, Commission said that legal profession needs to gear up with full determination in order to make *article 39 A* lively and effective. Like legal profession, health sector is also in private sector. Yet, there are several free government hospitals have been established to provide free and affordable health care services to the poor.

Unfortunately, till today, there is no public sector in legal profession. It is the duty and obligation

of the organized legal profession to set up its public sector unit where the services of its members would be available to those needy who cannot afford to pay the fees for their services. Legal aid scheme operated by the Government of India to some extent helps in this behalf. However, concrete measures have to be taken to set up public sector clinics, operated by members of the legal profession, where anyone who is needy and cannot afford to pay the fees of the private sector can walk in and not only get advice but even initiate proceedings for seeking justice.

### 2.6.2. *223<sup>rd</sup> Law Commission Report, 2009*

The report is very strategic and has a very crucial bearing upon the status of Legal Aid Services. Following measures were suggested based on the human rights perspective to meet development demands:

- (i) Human Rights forms the foundation to inclusive development demands. Poverty is the biggest curse for a society and its development. Injustices and discriminations in a society act as the main catalyst for omnipresent poverty.<sup>20</sup>
- (ii) Promoting Inclusive Participation and total transparent process in decision making. Participation of all ensures the feeling of connectivity in State's activities. No one should feel alone or dejected or left out. Feeling of oneness acts as a key component of a vibrant democratic society.
- (iii) Non-discrimination that is equity and equality are two main factors for maintaining development and poverty alleviation.
- (iv) Empowerment of individuals to practice their common liberties using instruments like lawful and political activity to gain ground in more traditional advancement regions.<sup>21</sup> The *Law Commission of India* highlighted the importance of free legal aid in a constitutional democracy like India where a significant section of the population has still not seen the constitutional promises of even the very basic fundamental rights being fulfilled for them.
- (v) Ensuring accountability of public and private organizations to advance, ensure and satisfy common freedoms and to be considered responsible in case these are not

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<sup>20</sup> Law Commission of India, "223<sup>rd</sup> Report on Need for Ameliorating the lot of the Have-nots – Supreme Court's Judgements" (April, 2009).

<sup>21</sup> Justice T. Mathivanan, Judge, Madras High Court "Legal Aid Issues, Challenges and Solutions an Empirical Study" available at: <http://www.hcmadras.tn.nic.in/legalaid-issues.pdf> (last visited on July 2, 2021)