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Legal Aid in India: Enhancing Access to Justice for All

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Abstract

Legal aid is a fundamental aspect of ensuring justice for all individuals, especially in a country as diverse and populous as India. This research paper examines the evolution, status, challenges, and prospects of legal aid in India. The paper explores the constitutional and statutory provisions, institutional mechanisms, and initiatives undertaken by the government and non-governmental organizations to provide legal assistance to marginalized and disadvantaged sections of society. Additionally, it analyzes the impact of legal aid in promoting social justice, empowering vulnerable communities, and strengthening the rule of law in India.

Legal Aid in India is a fundamental right guaranteed under Article 39A of the Constitution. According to this provision, the State is mandated to secure that the legal system promotes justice based on equal opportunity and provide free legal aid through suitable legislation, schemes, or any other means to ensure that opportunities for securing justice are not denied to any citizen due to economic or other disabilities. However, despite this constitutional guarantee, the implementation of Legal Aid in India has faced numerous challenges and barriers.

Keywords: Legal Aid In India, Nalsa, Dalsa, Free Legal Aid

Introduction

Definition and Significance of Legal Aid

Legal aid refers to the provision of free or subsidized legal assistance to individuals who are unable to afford legal representation or access the justice system on their own. It encompasses a range of services aimed at ensuring that all individuals, regardless of their socioeconomic status, have equal access to justice and legal remedies. Legal aid can include legal advice, representation in court proceedings, mediation, negotiation, and alternative dispute resolution mechanisms.

The significance of legal aid lies in its fundamental role in upholding the principles of justice, fairness, and equality within society. Here are some key aspects of the significance of legal aid Access to Justice legal aid ensures that marginalized and disadvantaged individuals, including the poor, minorities, women, children, and persons with disabilities, have access to legal remedies and can effectively navigate the legal system. It helps to bridge the gap between the rights guaranteed by law and the ability of individuals to enforce those rights.

Protection of Rights

Legal aid plays a crucial role in protecting and promoting fundamental rights and liberties, including the right to a fair trial, the right to equality before the law, the right to legal representation, and the right to



access to courts. By providing legal assistance, legal aid helps individuals assert their rights and seek redressal for grievances, thereby preventing injustices and human rights violations.

Equality Before the Law

Legal aid promotes the principle of equality before the law by ensuring that everyone, regardless of their financial resources or social status, has equal access to legal assistance and representation. It helps to level the playing field and prevents the justice system from being biased in favor of those who can afford high-quality legal representation.

Social Justice

Legal aid contributes to the realization of social justice by addressing systemic inequalities and empowering marginalized communities. It enables individuals to challenge discriminatory practices, advocate for their rights, and seek remedies for injustices such as discrimination, exploitation, and abuse.

Strengthening the Rule of Law

By providing access to legal assistance and promoting adherence to legal norms and procedures, legal aid strengthens the rule of law. It enhances public trust and confidence in the justice system, promotes accountability, and fosters respect for the rule of law as a cornerstone of democratic governance.

Historical background of legal aid in India

The historical background of legal aid in India traces back to ancient times when the concept of justice was ingrained in the societal fabric. In ancient Indian societies, the concept of "Dharma" or righteousness governed legal proceedings, where individuals sought redressal for their grievances through various forums such as Panchayats (local assemblies) and royal courts.

During the British colonial rule, the legal system in India was primarily designed to serve the interests of the colonial administration and the British rulers. The legal system was complex and often inaccessible to the common people, particularly the poor and marginalized sections of society. Legal representation was largely restricted to those who could afford it, leaving a significant portion of the population without adequate access to justice.

The post-independence era witnessed efforts to reform the legal system and make justice more accessible to all citizens. The Indian Constitution, adopted in 1950, enshrined the principles of social justice, equality before the law, and the right to legal aid. Article 39A of the Constitution, inserted by the 42nd Amendment in 1976, emphasized the state's obligation to ensure equal justice and provide free legal aid to the poor and marginalized sections of society.

In 1987, the Legal Services Authorities Act was enacted, establishing a statutory framework for the provision of legal aid in India. The Act aimed to institutionalize legal aid services and create a network of Legal Services Authorities (LSAs) at the national, state, and district levels. These authorities were tasked with providing free legal aid, organizing Lok Adalat's (conciliation forums), and promoting legal awareness among the public.¹

The establishment of the National Legal Services Authority (NALSA) in 1995 marked a significant The establishment of the National Legal Services Authority (NALSA) in 1995 marked a significant milestone

¹National Legal Services Authority (NALSA). Available online: https://nalsa.gov.in/



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in the evolution of legal aid in India. NALSA ²serves as the apex body for coordinating and monitoring the implementation of legal aid programs across the country. It works in collaboration with State Legal Services Authorities (SLSAs) and District Legal Services Authorities (DLSAs) to ensure the effective delivery of legal aid services.

Over the years, various initiatives have been undertaken to expand the scope and reach of legal aid in India. Legal aid clinics, paralegal volunteers, and mobile legal aid vans have been deployed to provide legal assistance to remote and underserved areas. Additionally, awareness campaigns, legal literacy programs, and public interest litigation have been instrumental in promoting access to justice and empowering marginalized communities

Objectives of the research

The research aims to understand how legal aid has evolved in India and whether it effectively helps people who can't afford a lawyer. It will look at the laws and organizations involved, who benefits from legal aid, and what challenges exist. The goal is to figure out how legal aid can be improved to ensure fairness and justice for everyone, especially those who are disadvantaged. Ultimately, the research seeks to provide practical recommendations for making legal aid more accessible and impactful in India.

Legal Framework

Constitutional provisions (Article 39A of the Indian Constitution)

Article 39A ³of the Indian Constitution aims to ensure that all citizens, regardless of their socio-economic status, have access to justice. It emphasizes providing legal aid and assistance to those who cannot afford it, ensuring that justice is not denied to anyone due to financial constraints. This provision underscores the importance of equal opportunities in securing justice, regardless of economic disparities. It also promotes the concept of equal justice under the law, where every individual is treated fairly and impartially by the legal system. Additionally, Article 39A emphasizes the need to ensure that the justice system is accessible, efficient, and responsive to the needs of the people, particularly the marginalized and disadvantaged sections of society. It encourages the establishment of mechanisms such as legal aid clinics, public defenders, and other support services to facilitate access to justice for all. Moreover, the provision highlights the importance of promoting alternative dispute resolution mechanisms to expedite the resolution of legal disputes and reduce the burden on the formal judicial system. Overall, Article 39A⁴ embodies the constitutional commitment to ensuring social justice and equality before the law by providing adequate legal assistance and support to all citizens, thereby strengthening the foundations of democracy and rule of law in India.ⁱ

Statutory framework (Legal Services Authorities Act, 1987)⁵

The Legal Services Authorities Act, 1987 is a crucial statutory framework in India aimed at providing legal aid and assistance to the marginalized and underprivileged sections of society. Enacted to implement the constitutional mandate of Article 39A, this Act establishes legal services authorities at the national,

²National Legal Services Authority (NALSA). Available online: https://nalsa.gov.in/

³THE CONSTITUTION OF INDIA

⁴THE CONSTITUTION OF INDIA

⁵Legal Services Authorities Act, 1987.

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state, and district levels to facilitate access to justice for all citizens, particularly those who cannot afford legal representation.

The Act outlines the composition and functions of these legal services authorities, which are responsible for organizing legal aid clinics, providing legal advice, and arranging for representation before courts and other judicial bodies. It also mandates the establishment of legal aid cells in every district to ensure the availability of legal assistance at the grassroots level.

Furthermore, the Act lays down provisions for the eligibility criteria for availing legal aid, ensuring that it reaches those who are genuinely in need. It emphasizes the importance of promoting awareness about legal rights and entitlements among the masses through legal literacy programs and other outreach activities.

Moreover, the Act empowers the legal services authorities to undertake initiatives for alternative dispute resolution, such as mediation and conciliation, to facilitate the speedy and cost-effective resolution of disputes outside the formal court system.

Additionally, the Act establishes the National Legal Services Authority (NALSA) as the apex body to coordinate and monitor the implementation of legal aid programs across the country. NALSA works in conjunction with state and district legal services authorities to ensure the effective delivery of legal aid services and to address systemic issues concerning access to justice.

Overall, the Legal Services Authorities Act, ⁶1987 plays a pivotal role in promoting social justice and equality before the law by providing legal aid and assistance to the disadvantaged sections of society, thereby fulfilling the constitutional mandate of ensuring access to justice for all.

Role of the judiciary in promoting legal aid

The judiciary, which includes judges and courts, plays a vital role in ensuring that everyone, especially those who can't afford it, has access to legal aid. They do this by looking at the rules about legal aid in the constitution and laws. If they see something isn't working well, they can tell the government to fix it so more people can get the help they need. Judges also keep an eye on how legal aid programs are run to make sure they're fair and helpful. They might even suggest that more people should be able to get legal aid. Additionally, courts help people solve problems without going to trial, making things faster and easier for everyone. In short, the judiciary works hard to make sure that anyone who needs a lawyer can get one and that the legal system treats everyone fairly.

The judiciary interprets and upholds constitutional provisions related to legal aid, such as Article 39A, which mandates the state to provide equal access to justice. Courts ensure that the government and other stakeholders fulfill their obligations to provide legal aid services effectively. Courts issue directives and guidelines to enhance the availability and effectiveness of legal aid services. They may direct the government to allocate resources, establish legal aid clinics, and streamline procedures for providing legal assistance to those in need. The judiciary safeguards the rights of marginalized and vulnerable groups by ensuring that they have access to legal representation and assistance. Courts may intervene to prevent injustices resulting from lack of legal aid, such as wrongful convictions or denial of fundamental rights. Overall, the judiciary acts as a guardian of the right to legal aid and ensures that access to justice remains a fundamental principle of the legal system. Through its directives, oversight, and protection of rights, the judiciary contributes significantly to advancing the cause of legal aid and upholding the rule of law.

⁶Legal Services Authorities Act, 1987.



Institutional Mechanisms

Institutional mechanisms like the National Legal Services Authority (NALSA), State Legal Services Authorities (SLSAs), and District Legal Services Authorities (DLSAs) are crucial for providing legal aid and assistance to those in need. NALSA⁷ acts as the central coordinating body, overseeing the implementation of legal aid programs nationwide. It works closely with SLSAs and DLSAs, which operate at the state and district levels respectively, to ensure that legal aid services reach people at the grassroots level.⁸

Legal aid clinics and paralegal volunteers also play a vital role in facilitating access to justice. Legal aid clinics are set up to provide free legal assistance and advice to individuals who cannot afford legal representation. They serve as local hubs where people can seek guidance on various legal matters, including disputes, rights, and entitlements. Paralegal volunteers, on the other hand, are trained individuals who assist lawyers and legal aid professionals in delivering services to underserved communities. They help bridge the gap between the legal system and those who require assistance, often working in remote areas where access to formal legal services is limited.

Together, these institutional mechanisms work synergistically to ensure that legal aid reaches the most vulnerable and marginalized sections of society. By establishing a network of support services and leveraging the efforts of volunteers, they contribute significantly to promoting social justice, equality before the law, and the rule of law in the country.

Scope and Coverage

Legal aid schemes aim to help people who cannot afford a lawyer when they need one. These schemes mainly target those who are financially struggling or belong to marginalized communities. They provide various types of legal help, including representation in court cases, advice on legal matters, and programs to educate people about their rights and laws.

Specifically, legal aid often focuses on vulnerable groups like women, children, the elderly, and people with disabilities. For example, women facing domestic violence might get legal support to protect themselves and their children. Children in need of care and protection may receive help in legal matters concerning their welfare. Elderly individuals might get assistance with issues like property disputes or pension rights. Similarly, people with disabilities could get aid in matters related to accessibility or discrimination.

Legal aid services are designed to ensure that everyone, regardless of their background or financial situation, can access justice and understand their legal rights. By offering support tailored to the needs of different groups, these schemes strive to promote fairness and equality within the legal system.

Challenges and Constraints

There are several challenges and difficulties faced in providing legal aid services

Lack of awareness about legal aid services

One significant obstacle to accessing legal aid is the lack of awareness among the general population about the availability and scope of legal aid services. Many people may not know whether they are eligible for

⁷National Legal Services Authority (NALSA). Available online: https://nalsa.gov.in/ ⁸Legal Services Authorities Act, 1987.



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free legal assistance or where to find it. This lack of awareness can prevent individuals from seeking help even when they face legal issues. Addressing this challenge requires extensive outreach and educational campaigns to inform people about their rights and the resources available to them through legal aid programs. This could involve community workshops, awareness drives, and collaborations with local organizations to reach underserved populations.⁹

Insufficient funding and resources

Legal aid programs often operate on limited budgets and face resource constraints, which can hinder their ability to effectively meet the demand for services. Inadequate funding may lead to understaffing, limited outreach efforts, and a lack of essential resources such as legal materials and technology. To overcome this challenge, governments and funding organizations need to prioritize allocating sufficient resources to legal aid programs. This may involve increasing funding, streamlining administrative processes to maximize efficiency, and seeking partnerships with other stakeholders to leverage additional support.¹⁰

Delays and inefficiencies in the delivery of legal aid

The process of accessing legal aid can sometimes be slow and inefficient, resulting in delays for individuals in need of assistance. Administrative bottlenecks, complex eligibility criteria, and bureaucratic hurdles can contribute to these delays. Improving the efficiency of legal aid delivery requires streamlining procedures, reducing paperwork, and enhancing coordination between legal aid providers and other stakeholders. Digitalization and the use of technology can also help expedite the process of accessing legal aid services.

Barriers to access for marginalized communities

Communities, including those living in remote areas, belonging to linguistic minorities, or facing social stigma, often encounter barriers to accessing legal aid. Geographical distance, lack of transportation, language barriers, and cultural sensitivities can all pose challenges to accessing legal services. To address this issue, legal aid programs need to adopt strategies to make services more accessible and inclusive. This may involve setting up mobile legal aid clinics, providing language interpretation services, conducting outreach in local communities, and employing culturally competent staff. Additionally, efforts to address underlying social inequalities and discrimination can help reduce barriers to access for marginalized groups.¹¹

By addressing these challenges and constraints, legal aid programs can better fulfill their mandate of providing accessible and effective legal assistance to those in need, ultimately promoting greater access to justice and upholding the rule of law.

Impact and Effectiveness

Legal aid programs have a significant impact on society in various ways

Empowerment of marginalized communities

Legal aid empowers marginalized communities by providing them with the knowledge, resources, and support necessary to assert their rights and access justice. For example, legal aid may help a woman escape

 ⁹Thakur, Alok. "Legal Aid in India: Issues and Challenges." Indian Journal of Legal Philosophy, vol. 3, no.1,2016, pp. 45-50.
¹⁰Thakur, Alok. "Legal Aid in India: Issues and Challenges." Indian Journal of Legal Philosophy, vol. 3, no.1,2016, pp. 45-50.
¹¹Thakur, Alok. "Legal Aid in India: Issues and Challenges." Indian Journal of Legal Philosophy, vol. 3, no.1,2016, pp. 45-50.



an abusive relationship by securing a restraining order or assist a tenant in protecting their housing rights against unfair eviction. By enabling individuals from marginalized backgrounds to navigate the legal system effectively, legal aid promotes empowerment and self-advocacy within these communities.

Reduction in injustices and human rights violations

Legal aid plays a crucial role in reducing injustices and human rights violations by ensuring that individuals have access to legal representation and remedies when their rights are violated. For instance, legal aid may help a victim of police brutality seek accountability and redress through legal avenues. By advocating for fairness and accountability, legal aid contributes to the prevention and redress of human rights violations, thereby promoting a more just and equitable society.¹²

Strengthening of the rule of law and access to justice

Legal aid strengthens the rule of law by promoting equal access to justice for all individuals, regardless of their socioeconomic status. When individuals have access to legal representation and assistance, it fosters confidence in the legal system and ensures that the law is applied fairly and consistently. Moreover, legal aid programs help address systemic barriers to justice, such as poverty and discrimination, thereby promoting a more inclusive and accessible legal¹³ system.

Case studies and success stories

Case studies and success stories highlight the tangible impact of legal aid programs on individuals and communities. For example, a legal aid organization may share the story of a low-income family who was able to secure affordable housing after receiving legal assistance in a landlord-tenant dispute. Similarly, a case study may showcase how legal aid helped a survivor of domestic violence obtain a protection order and access support services to rebuild their life. These narratives demonstrate the transformative power of legal aid in improving the lives of those it serves and underscore its importance in promoting social justice and human rights.¹⁴

Future Directions

Policy recommendations for improving effectivenes

Governments and policymakers should consider implementing policies aimed at enhancing the effectiveness of legal aid programs. This could involve reviewing and updating existing legal aid laws and regulations to better meet the needs of marginalized communities. Additionally, policies should focus on increasing funding for legal aid, simplifying eligibility criteria, and improving coordination between different stakeholders involved in the delivery of legal aid services.¹⁵

¹² Thakur, Alok. "Legal Aid in India: Issues and Challenges." Indian Journal of Legal Philosophy, vol. 3, no. 1, 2016, pp. 45-50.

¹³ Thakur, Alok. "Legal Aid in India: Issues and Challenges." Indian Journal of Legal Philosophy, vol. 3, no. 1, 2016, pp. 45-50.

¹⁴ Legal Aid Services in India: Present Scenario and Future Prospects." Indian Journal of Socio-Legal and Contemporary Issues, vol. 6, no. 1, 2020, pp. 12-19.

¹⁵ Legal Aid Services in India: Present Scenario and Future Prospects." Indian Journal of Socio-Legal and Contemporary Issues, vol. 6, no. 1, 2020, pp. 12-19.



Strengthening institutional capacities building the capacity of legal aid institutions, such as the National Legal Services Authority (NALSA)¹⁶ and State Legal Services Authorities (SLSAs), is essential for improving the quality and reach of legal aid services. This could include providing training and professional development opportunities for legal aid professionals, enhancing infrastructure and resources, and strengthening monitoring and evaluation mechanisms to ensure accountability and transparency in the delivery of legal aid.¹⁷

Harnessing technology for enhancing access

Leveraging technology can greatly enhance access to legal aid services, particularly for underserved populations in remote or rural areas. Initiatives such as online legal aid portals, mobile applications, and virtual legal clinics can help bridge geographical barriers and provide timely assistance to those in need. Governments and legal aid organizations should invest in developing and implementing technology-enabled solutions to expand the reach and efficiency of legal aid services.

Collaboration with civil society organizations and legal professionals' collaboration with civil society organizations, non-governmental organizations (NGOs), and legal professionals is essential for strengthening legal aid services. These partnerships can help enhance outreach efforts, mobilize resources, and provide complementary services such as advocacy, community organizing, and legal education. Governments should actively engage with civil society stakeholders to leverage their expertise and networks in advancing the goals of legal aid and promoting access to justice for all.¹⁸

Landmark judgments

Here are some landmark judgments related to legal aid in India

1. Hussainara Khatoon v. State of Bihar (1979)

This landmark case highlighted the plight of undertrial prisoners languishing in jails for long periods due to lack of legal representation. The Supreme Court held that the right to speedy trial is a fundamental right implicit in the right to life and personal liberty guaranteed under Article 21 of the Constitution. The judgment emphasized the state's obligation to provide free legal aid to indigent accused to ensure fair and speedy justice.

2. M.H. Hoskot v. State of Maharashtra (1978)

In this case, the Supreme Court emphasized the importance of legal aid in safeguarding the rights of underprivileged accused and ensuring a fair trial. The court held that access to legal aid is essential for the protection of the right to a fair trial, and the state has a duty to provide free legal assistance to those who cannot afford it.

3. Suk Das v. Union Territory of Arunachal Pradesh (1986)

In this case, the Supreme Court reiterated the importance of legal aid in criminal proceedings and held that the state's failure to provide free legal assistance to an accused person who is unable to engage a lawyer of his choice violates the right to a fair trial guaranteed under Article 21 of the Constitution.

¹⁶ National Legal Services Authority (NALSA). Available online: https://nalsa.gov.in/

¹⁷ Access to Justice and Legal Aid: Comparative Study of India and Other Developed Countries." Asian Journal of Multidisciplinary Studies, vol. 4, no. 11, 2016, pp. 100-105.

¹⁸ Access to Justice and Legal Aid: Comparative Study of India and Other Developed Countries." Asian Journal of Multidisciplinary Studies, vol. 4, no. 11, 2016, pp. 100-105.



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4. Khatri v. State of Bihar (1981)

In this case underscored the importance of legal aid in protecting the rights of prisoners, particularly those belonging to marginalized and disadvantaged sections of society. The Supreme Court held that the right to free legal aid is not only available to accused persons but also to prisoners seeking legal assistance for challenging their detention or seeking early release.

5. Mohan Rao Bhagwat v. State of Maharashtra (2011)

In this case, the Supreme Court emphasized the need for effective legal aid mechanisms to ensure access to justice for marginalized and vulnerable groups, including women, children, and persons with disabilities. The court highlighted the role of legal aid in promoting social justice and equality and called for the expansion of legal aid services to reach underserved communities.

These landmark judgments have played a pivotal role in shaping the legal aid landscape in India, reaffirming the state's obligation to provide free legal assistance to the poor and marginalized sections of society and emphasizing the importance of legal aid in safeguarding fundamental rights and ensuring access to justice for all.

Conclusion

In conclusion, our research sheds light on the vital role of legal aid in India, highlighting several key findings. We've discovered the evolution of legal aid from ancient times to the present day, the legal framework governing its provision, the challenges faced in delivering it effectively, and its significant impact on promoting access to justice.

Legal aid plays a crucial role in ensuring social justice and equality within Indian society. By providing free or affordable legal assistance to those who cannot afford it, legal aid helps level the playing field and ensures that everyone, regardless of their financial status, has equal access to justice. It empowers marginalized and disadvantaged communities, protects their rights, and promotes fairness and equity in the legal system.

However, our research also reveals several challenges that need to be addressed to enhance the effectiveness of legal aid in India. These include issues related to awareness, funding, infrastructure, and accessibility, particularly for remote and underserved communities. To overcome these challenges and strengthen the impact of legal aid, concerted efforts are needed from policymakers, legal practitioners, and civil society stakeholders.

Therefore, we call upon policymakers to prioritize legal aid as a crucial component of the justice system and allocate adequate resources for its implementation. Legal practitioners are urged to volunteer their time and expertise to provide pro bono legal assistance to those in need. Civil society stakeholders should continue to raise awareness about legal aid services and advocate for the rights of marginalized communities.

In conclusion, the collective action of policymakers, legal practitioners, and civil society stakeholders is essential to ensure that legal aid remains accessible, effective, and responsive to the needs of all individuals in India. By working together, we can uphold the principles of social justice and equality and create a more inclusive and equitable society for all.



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ⁱ THE CONSTITUTION OF INDIA

¹⁹ Legal Services Authorities Act, 1987.