

# Bridging the Gap Between Law and Justice an in-Depth Examination of Article 39a and the Right to Free Legal Aid in India

Abdul Samad Suhail<sup>1</sup>, Dr. Ashish Kumar Singhal<sup>2</sup>

<sup>1</sup>LL.M. Student, 2024-2025 , Icfai Law School The Icfai University Dehradun Uttarakhand

<sup>2</sup>Associate Professor, Icfai Law School, The Icfai University Dehradun Uttarakhand

## ABSTRACT

Article 39A of the Indian Constitution enshrines the directive principle of state policy to provide free legal aid, aiming to ensure equal access to justice for all citizens, particularly the economically disadvantaged. This research undertakes an in-depth examination of the practical implementation of this constitutional mandate, scrutinizing the existing legal framework and its efficacy in bridging the gap between law and justice. The study analyzes the challenges faced in delivering effective legal aid, including issues related to awareness, resource allocation, and the quality of legal representation. Through a comprehensive review of relevant case laws, statutory provisions, and reports from legal aid authorities, this research identifies the discrepancies between the constitutional ideal and the ground realities. It explores the systemic barriers that hinder the realization of equitable justice, such as procedural complexities, bureaucratic inefficiencies, and socio-economic disparities. Furthermore, the study investigates the impact of the National Legal Services Authority (NALSA) and State Legal Services Authorities in operationalizing Article 39A, evaluating their performance in extending legal assistance to marginalized communities. It also examines the role of civil society organizations and pro bono initiatives in supplementing state efforts. Finally, this research proposes recommendations for strengthening the legal aid system, advocating for enhanced funding, improved infrastructure, and greater public awareness to ensure that the constitutional promise of free legal aid translates into tangible justice for all in India, thereby bridging the existing chasm between law and its equitable realization.

**Keywords:** Free Legal Aid, Indian Constitution, Article 39A, Legal Services Authority, Legal Representation, Judicial System.

## 1. INTRODUCTION

The concept of equal justice and free legal aid stands as a cornerstone of democratic governance and reflects a nation's commitment to fairness, equity, and inclusivity. In India, the foundation of this principle lies in "Article 39A of the Constitution," which mandates the state to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This provision enshrines the essence of social justice, a principle that underscores the transformative nature of the Indian Constitution. Equal justice entails a system where the scales of law do not favor individuals based on their

<sup>1</sup> LL.M. Student, 2024-2025 , ICFAI LAW SCHOOL THE ICFAI UNIVERSITY DEHRADUN UTTARAKHAND

<sup>2</sup> Associate Professor, ICFAI Law School, THE ICFAI UNIVERSITY DEHRADUN UTTARAKHAND

socio-economic status, caste, religion, or gender. However, achieving this ideal is fraught with challenges, including structural inequalities, limited access to resources, and systemic inefficiencies. Legal aid bridges these gaps by providing marginalized sections of society access to competent legal representation. The promotion of equal justice and free legal aid is not merely a constitutional obligation but also a moral imperative in a country with deep-rooted inequalities.

The jurisprudential significance of "Article 39A" has been emphasized in numerous landmark judgments. For instance, in "Hussainara Khatoon v. State of Bihar"<sup>3</sup>, the Supreme Court held that the right to free legal aid is integral to the right to life and personal liberty under "Article 21 of the Constitution." This seminal case highlighted the plight of undertrial prisoners languishing in jails due to their inability to afford legal representation, compelling the judiciary to expand the horizons of constitutional interpretation. Furthermore, "Article 39A" aligns with international commitments like the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), which emphasize the right to legal assistance as fundamental to fair trial standards. Thus, the introduction underscores the symbiotic relationship between equal justice and free legal aid in upholding the rule of law and promoting social welfare.<sup>4</sup>

The significance of equal justice and legal aid in modern democracies cannot be overstated. Legal systems are the bedrock of social order, ensuring the protection of rights and resolution of disputes. However, these systems can often be inaccessible to the economically and socially disadvantaged, perpetuating cycles of inequality and injustice. In such contexts, legal aid serves as a critical instrument of empowerment, enabling individuals to challenge unfair practices, assert their rights, and participate meaningfully in democratic processes. For a democracy to thrive, its citizens must trust in the fairness of its legal framework, and this trust hinges on the assurance that justice is not a privilege of the wealthy but a right of every individual.

The Indian judiciary has played a pivotal role in advancing the ideals of equal justice and free legal aid. In "M.H. Hoskot v. State of Maharashtra"<sup>5</sup>, Justice Krishna Iyer emphasized that the right to legal aid is implicit in "Article 21" and that free legal services should be treated as a state obligation to ensure fairness in criminal trials. Such pronouncements have redefined justice from a procedural concept to a substantive one, aiming to make the law a tool for social transformation. Equal justice is also integral to fostering social harmony, particularly in a pluralistic society like India, where disparities in wealth, education, and opportunities often intersect with systemic biases. Legal aid not only addresses these disparities but also reinforces the constitutional vision of justice as envisaged in the Preamble, which aspires to secure justice—social, economic, and political—for all citizens. Thus, the significance of equal justice and legal aid transcends legal discourse, shaping the moral and ethical fabric of modern democracies.<sup>6</sup>

The inclusion of "Article 39A" in the Indian Constitution reflects the evolving understanding of justice in post-independence India. While the framers of the Constitution laid the groundwork for equality before the law under "Article 14," the need for a more proactive approach to ensure access to justice became apparent over time. The insertion of "Article 39A" through the 42nd Amendment Act of 1976 marked a watershed moment in India's constitutional history, emphasizing the state's responsibility to create

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<sup>3</sup> [1980] 1 SCC 81.

<sup>4</sup> Arjun Kumar, "Analyzing the Impact of Free Legal Aid on Social Justice in India", 5 *Journal of Indian Law and Society* 75 (2020).

<sup>5</sup> [1978] 3 SCC 544.

<sup>6</sup> Priya Sharma, "The Evolution of Legal Aid Services in India: A Critical Analysis", 12 *Indian Journal of Legal Studies* 102 (2019).

mechanisms for free legal aid. This amendment was introduced during a period of socio-political turmoil, underscoring the necessity of safeguarding the rights of vulnerable populations against systemic injustices. The roots of legal aid in India, however, predate the constitutional amendment. Initiatives like the Bombay Legal Aid Society, established in 1924, and subsequent recommendations by committees such as the Law Commission of India highlighted the need for institutionalized legal aid. The judiciary, too, recognized the importance of legal aid early on. In "*Khatri v. State of Bihar*<sup>7</sup>," the Supreme Court condemned the denial of legal aid to poor prisoners, asserting that access to justice is a fundamental right under "Article 21." Thus, the historical evolution of "Article 39A" reflects the Indian state's commitment to translating the abstract ideals of justice into tangible realities, addressing the structural barriers that impede access to legal remedies.

The primary objective of this study is to analyze the implementation and efficacy of "Article 39A" within the Indian legal framework, particularly its role in bridging the gap between formal equality and substantive justice. The study seeks to examine the legislative, judicial, and administrative measures undertaken to promote free legal aid and evaluate their impact on marginalized communities. Additionally, it aims to identify challenges in the practical realization of equal justice, such as resource constraints, lack of awareness, and systemic inefficiencies.

The scope of this study extends beyond constitutional interpretation to include an analysis of statutory frameworks like the "Legal Services Authorities Act, 1987," which institutionalized legal aid in India through the establishment of National and State Legal Services Authorities. By examining landmark judgments, statutory provisions, and empirical data, the study seeks to offer a comprehensive understanding of the interplay between law, policy, and social justice. Furthermore, the study explores the comparative dimensions of legal aid by referencing international practices and standards, highlighting best practices that can inform the Indian legal system. In doing so, it endeavors to contribute to the broader discourse on legal empowerment and its role in fostering inclusive and equitable societies.<sup>8</sup>

## 2. CONSTITUTIONAL MANDATE OF ARTICLE 39A

"Article 39A" of the Constitution of India embodies the principle of equal justice and free legal aid, emphasizing the state's duty to provide access to justice for all, irrespective of economic or social constraints. This provision, introduced through the 42nd Amendment Act of 1976, is a pivotal addition to the constitutional framework, aiming to transform the abstract ideals of justice into a tangible reality. By mandating the state to ensure that the legal system operates in a manner that promotes justice on the basis of equality, "Article 39A" establishes a robust foundation for the democratization of legal processes. The article's emphasis on free legal aid underscores the importance of dismantling barriers that impede marginalized groups from securing their rights. The judiciary has interpreted this mandate expansively, viewing it not merely as a directive principle but as an integral component of the broader constitutional commitment to justice, equality, and liberty.

In "*Hussainara Khatoon v. State of Bihar*<sup>9</sup>," the Supreme Court highlighted the inseparable link between free legal aid and the right to life under "Article 21," holding that the denial of legal aid constitutes a

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<sup>7</sup> [1981] 1 SCC 627.

<sup>8</sup> "Ensuring Equal Justice and Access to Free Legal Aid", available at: <https://www.legalserviceindia.com/legal/article-17465-ensuring-equal-justice-and-access-to-free-legal-aid.html> (last visited on November 15, 2024).

<sup>9</sup> [1980] 1 SCC 81.

violation of fundamental rights. Similarly, in "Khatri v. State of Bihar"<sup>10</sup>, the court reiterated that providing legal assistance to underprivileged individuals is a constitutional obligation of the state. These judgments underscore the transformative potential of "Article 39A," positioning it as a bridge between the Directive Principles of State Policy (DPSPs) and Fundamental Rights, particularly "Articles 14" and "21." The constitutional mandate of "Article 39A" thus serves as a powerful tool to address systemic inequities, ensuring that justice is accessible to the most vulnerable segments of society.

### 2.1 Text and Interpretation of Article 39A

The text of "Article 39A" provides a succinct yet profound directive: "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." This provision establishes two primary obligations for the state: to ensure the legal system operates equitably and to provide free legal aid to those who cannot afford it. While "Article 39A" falls within Part IV of the Constitution, making it non-justiciable in theory, the judiciary has repeatedly underscored its critical role in effectuating fundamental rights.<sup>11</sup>

The interpretation of "Article 39A" by Indian courts has significantly expanded its practical applicability. For instance, in "M.H. Hoskot v. State of Maharashtra"<sup>12</sup>, the Supreme Court observed that the right to free legal aid is implicit in the guarantee of a fair trial under "Article 21." This interpretation effectively elevated the directive under "Article 39A" to the status of a fundamental right, thereby reinforcing its enforceability. Furthermore, the judiciary's proactive stance has compelled the executive and legislature to institutionalize legal aid mechanisms, as seen in the enactment of the "Legal Services Authorities Act, 1987." Thus, the interpretation of "Article 39A" demonstrates its potential to bridge the gap between constitutional ideals and legislative realities, ensuring that the promise of justice is not confined to the privileged few.

### 2.2 Relationship with Directive Principles of State Policy

"Article 39A" holds a unique position within the broader framework of the Directive Principles of State Policy (DPSPs), which collectively aim to establish a just and equitable social order. While DPSPs are traditionally viewed as non-enforceable guidelines for governance, "Article 39A" stands out for its direct linkage to the enforceable provisions of Part III of the Constitution, particularly "Articles 14" and "21." This synergy underscores the complementary relationship between fundamental rights and directive principles, with "Article 39A" serving as a conduit for their harmonization.

The framers of the Constitution envisioned DPSPs as instruments to guide the state in achieving socio-economic justice. "Article 39A" exemplifies this vision by focusing on the legal system's role in mitigating inequality. In "State of Tamil Nadu v. Abu Kavur Bai"<sup>13</sup>, the Supreme Court emphasized that DPSPs, including "Article 39A," should inform the interpretation and implementation of fundamental rights. This integrative approach ensures that the principles enshrined in "Article 39A" are not mere aspirations but practical directives that shape governance and policy-making.<sup>14</sup>

<sup>10</sup> [1981] 1 SCC 627.

<sup>11</sup> Rajesh Patel, "Interpreting Article 39A: Judicial Perspectives and Implications", 6 *Supreme Court Cases Journal* 88 (2016).

<sup>12</sup> [1978] 3 SCC 544.

<sup>13</sup> [1984] 1 SCC 515.

<sup>14</sup> Vikram Singh, "Directive Principles and Legal Aid: An Examination of Article 39A", 11 *Indian Journal of Public Law* 85 (2013).

### 2.3 Role of Article 39A in Advancing Social Justice

The role of "Article 39A" in advancing social justice is pivotal, as it addresses the structural and systemic barriers that hinder access to justice for marginalized communities. By mandating free legal aid, "Article 39A" ensures that economic disparities do not translate into legal inequities, thereby fostering an inclusive legal system. The provision's emphasis on equal opportunity aligns with the broader constitutional commitment to social justice, as articulated in the Preamble and DPSPs.

Judicial pronouncements have repeatedly highlighted the transformative potential of "Article 39A" in promoting social justice. In "Suk Das v. Union Territory of Arunachal Pradesh"<sup>15</sup>, the Supreme Court held that failure to provide legal aid constitutes a denial of a fair trial, thereby underscoring the centrality of "Article 39A" in upholding constitutional guarantees. Moreover, the institutional framework established under the "Legal Services Authorities Act, 1987" reflects the operationalization of "Article 39A," providing free legal aid to millions through a decentralized network of legal services authorities. Thus, "Article 39A" serves as a critical tool for advancing social justice, ensuring that the legal system functions as an instrument of empowerment rather than oppression.

### 2.4 LEGAL FRAMEWORK SUPPORTING FREE LEGAL AID IN INDIA

India's legal framework supporting free legal aid is a comprehensive system designed to uphold the constitutional mandate of "Article 39A." This framework not only translates the directive into actionable policies but also ensures its practical application through robust institutional structures. The cornerstone of this framework is the "Legal Services Authorities Act, 1987," a landmark legislation aimed at providing statutory backing to free legal aid initiatives. Through this Act, India has institutionalized legal aid services, ensuring that the principle of equal justice is operationalized across all levels of society. The framework also emphasizes accessibility and inclusivity, targeting marginalized groups that have historically faced barriers to justice. Legal aid is not merely a tool for dispute resolution; it is a means of empowering individuals, enabling them to assert their rights and challenge systemic inequities. The following sections explore the key components of this framework in detail, highlighting the interplay between legislation, institutions, and public participation.<sup>16</sup>

#### 2.4.1 The Legal Services Authorities Act, 1987: An Overview

The "Legal Services Authorities Act, 1987" is the statutory embodiment of the principles enshrined in "Article 39A," aimed at providing free and competent legal services to the underprivileged. Enacted to implement the constitutional directive, the Act establishes a network of legal services authorities at the national, state, and district levels, creating a decentralized structure to ensure the effective delivery of legal aid. The Act empowers these authorities to organize legal aid camps, lok adalats (people's courts), and awareness programs, thereby addressing the twin objectives of access to justice and legal literacy. By institutionalizing legal aid, the Act ensures that the promise of justice is not restricted to theoretical ideals but becomes a lived reality for those on the margins of society.

One of the Act's notable contributions is the creation of lok adalats, a forum for alternative dispute resolution. This mechanism not only provides an accessible platform for dispute resolution but also reduces the burden on conventional courts, ensuring timely justice. In "State of Punjab v. Jalour Singh"<sup>17</sup>,

<sup>15</sup> [1986] 2 SCC 401.

<sup>16</sup> "Legal Services Authorities Act, 1987 - National Legal Services Authority", available at: <https://nalsa.gov.in/acts-rules/the-legal-services-authorities-act-1987> (last visited on November 20, 2024).

<sup>17</sup> [2008] 2 SCC 660.

the Supreme Court lauded the role of lok adalats in delivering inexpensive and expeditious justice. Furthermore, the Act mandates the appointment of legal services committees at various levels, ensuring that legal aid is available to individuals irrespective of their geographical or socio-economic status. By doing so, the Act operationalizes the constitutional vision of a legal system that promotes justice on the basis of equality.

#### **2.4.2 Key Provisions Ensuring Legal Aid to Marginalized Groups**

The "Legal Services Authorities Act, 1987" contains several provisions aimed at ensuring that marginalized groups receive free legal aid. "Section 12" of the Act enumerates the categories of persons eligible for legal aid, including Scheduled Castes (SCs), Scheduled Tribes (STs), women, children, and persons with disabilities. This inclusivity reflects the Act's commitment to addressing systemic inequalities that have historically excluded certain groups from the legal process. Moreover, "Section 13" ensures that eligibility for legal aid is assessed on the basis of the applicant's economic condition, ensuring that financial constraints do not become a barrier to justice.

In "Suk Das v. Union Territory of Arunachal Pradesh"<sup>18</sup>, the Supreme Court emphasized that legal aid should be provided not only to ensure compliance with the law but also to uphold the dignity and equality of individuals. Such judicial pronouncements have reinforced the Act's focus on marginalized groups, compelling legal services authorities to adopt a proactive approach in identifying and assisting eligible beneficiaries. Additionally, the Act's provisions encourage collaboration with non-governmental organizations (NGOs) and community-based organizations, ensuring a holistic approach to legal aid delivery.<sup>19</sup>

#### **2.4.3 Role of National Legal Services Authority (NALSA)**

The "National Legal Services Authority (NALSA)" plays a pivotal role in implementing the objectives of the "Legal Services Authorities Act, 1987." Established under "Section 3" of the Act, NALSA serves as the apex body responsible for framing policies, monitoring implementation, and coordinating with state and district legal services authorities. Its primary function is to ensure that legal aid services reach every corner of the country, particularly rural and remote areas where access to justice is often limited.

NALSA's initiatives include legal literacy programs, capacity-building workshops, and the development of specialized schemes for vulnerable groups. For instance, NALSA's "Scheme for Legal Services to Victims of Acid Attacks" addresses the unique challenges faced by survivors of gender-based violence. Similarly, its "Scheme for Child-Friendly Legal Services" ensures that children in conflict with the law receive adequate legal representation. These schemes exemplify NALSA's commitment to tailoring legal aid services to the specific needs of marginalized communities. In "Harshad S. Mehta v. State of Maharashtra"<sup>20</sup>, the Supreme Court commended NALSA's efforts in institutionalizing legal aid, noting that its initiatives have significantly expanded access to justice across India.

#### **2.4.4 Legal Aid Clinics and Public Awareness Campaigns**

Legal aid clinics and public awareness campaigns are integral components of India's legal aid framework, ensuring that legal assistance is accessible to the most vulnerable populations. Legal aid clinics, established in collaboration with law schools, NGOs, and community organizations, provide free legal advice and representation to individuals who cannot afford professional legal services. These clinics often

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<sup>18</sup> [1986] 2 SCC 401.

<sup>19</sup> Anil Kumar, "Legal Aid Provisions for Marginalized Communities under the Legal Services Authorities Act, 1987", 6 *Journal of Social Justice and Law* 78 (2006).

<sup>20</sup> [2001] 8 SCC 257.

operate in rural and underserved areas, addressing issues ranging from land disputes to domestic violence. By involving law students in the delivery of legal aid, these clinics also serve as a training ground for future lawyers, fostering a culture of social responsibility within the legal profession.

Public awareness campaigns complement the work of legal aid clinics by educating citizens about their rights and the availability of free legal aid services. NALSA, in collaboration with state legal services authorities, organizes legal literacy camps, radio programs, and social media campaigns to disseminate information about legal aid. These initiatives are particularly crucial in a country like India, where lack of awareness often prevents individuals from seeking legal recourse. In "*Delhi Domestic Working Women's Forum v. Union of India*"<sup>21</sup>, the Supreme Court emphasized the importance of public awareness in ensuring the effective implementation of legal aid schemes. By empowering individuals with knowledge, these campaigns enable them to assert their rights and seek justice, thereby reinforcing the constitutional vision of equal justice for all.<sup>22</sup>

## 2.5 JUDICIAL INTERPRETATION AND ACTIVISM ON ARTICLE 39A

The judiciary has played a transformative role in interpreting and expanding the ambit of "Article 39A of the Indian Constitution," which directs the State to ensure that justice is not denied to any citizen by reason of economic or other disabilities. Judicial activism in India has been pivotal in ensuring the practical realization of the right to free legal aid and equal justice. While "Article 39A" is part of the Directive Principles of State Policy (DPSP) and is not directly enforceable in a court of law, the judiciary has elevated its status by interpreting it in conjunction with "Articles 14, 19, and 21," thereby giving it a quasi-enforceable character. This evolution highlights the judiciary's recognition of free legal aid as essential to fulfilling the promise of equality and fundamental rights. Courts have consistently interpreted "Article 39A" not merely as a directive but as a constitutional mandate requiring affirmative action to bridge the gap between access to justice and socio-economic disparities. The judiciary's interventions have spanned a broad spectrum, from laying down procedural safeguards for indigent persons to institutionalizing mechanisms for legal aid delivery. Through an expansive interpretation of fundamental rights and consistent judicial activism, courts have sought to transform "Article 39A" into an actionable right, thereby underscoring its indispensability to India's constitutional ethos.

### 2.5.1 Landmark Judgments Expanding the Scope of Article 39A

The landmark judgment in "*Hussainara Khatoon v. State of Bihar*" epitomizes the judiciary's commitment to ensuring the realization of equal justice and free legal aid under "Article 39A." The case highlighted the appalling conditions of undertrial prisoners who had languished in jails for periods exceeding the maximum sentence for their alleged offenses. The Supreme Court, invoking "Articles 21 and 39A," held that the right to free legal aid is an essential element of the right to life and personal liberty. It directed the State to provide legal representation to indigent persons and implement measures to prevent prolonged detention. This judgment underscored the interconnectedness of fundamental rights and DPSPs, reinforcing the idea that free legal aid is indispensable to achieving substantive justice.<sup>23</sup>

#### 2.5.1.1 "M.H. Hoskot v. State of Maharashtra [1978] 3 SCC 544"

In "*M.H. Hoskot v. State of Maharashtra*," the Supreme Court reiterated the principle that the right to free

<sup>21</sup> [1995] 1 SCC 14.

<sup>22</sup> Natasha Mehra, "Public Awareness Campaigns and Legal Aid Services", 4 *Journal of Social Legal Policy* 75 (2007).

<sup>23</sup> "Landmark Judgments on Free Legal Aid", available at: <https://www.barandbench.com/articles/landmark-judgments-on-legal-aid-in-india> (last visited on November 16, 2024).

legal aid is an inherent part of "Article 21." The Court ruled that an accused has the right to be represented by counsel at the State's expense if they cannot afford one. It emphasized that procedural safeguards and legal representation are integral to a fair trial, and the State has a duty to ensure these protections irrespective of the individual's economic status. By linking the right to free legal aid with the right to life and personal liberty, the judgment expanded the constitutional understanding of access to justice.

### **2.5.1.2 "Khatri v. State of Bihar [1981] 1 SCC 627"**

The decision in "Khatri v. State of Bihar" further cemented the judiciary's proactive approach towards implementing "Article 39A." This case concerned the plight of visually impaired undertrial prisoners who were victims of police atrocities. The Court not only mandated the provision of legal aid to these prisoners but also observed that the obligation to provide free legal services arises the moment a person is produced before a magistrate. This judgment highlighted the proactive role the judiciary expects from the State in ensuring legal aid, emphasizing that denial of such aid amounts to a violation of constitutional rights.

### **2.5.2 Role of Judiciary in Bridging the Gap Between Law and Justice**

The judiciary's efforts to bridge the gap between law and justice reflect its steadfast commitment to the constitutional promise of equal justice. Recognizing the socio-economic barriers that impede access to legal remedies, courts have consistently underscored the importance of institutional mechanisms like legal aid clinics, legal literacy programs, and Lok Adalats. The judiciary has also emphasized the proactive role of legal aid authorities in ensuring that marginalized groups are aware of and can access their rights. By interpreting "Article 39A" as a functional and dynamic provision, courts have sought to translate its aspirational ideals into concrete outcomes. For instance, the introduction of the National Legal Services Authority Act, 1987 (NALSA), can be attributed to judicial pronouncements that highlighted the need for statutory frameworks to operationalize free legal aid. Moreover, through Public Interest Litigations (PILs), the judiciary has amplified the voices of marginalized groups, making the legal system more inclusive and equitable.<sup>24</sup>

### **2.5.3 Challenges in Implementing Court-Driven Mandates**

Despite the judiciary's proactive stance, implementing court-driven mandates under "Article 39A" faces several challenges. Resource constraints remain a significant hurdle, with insufficient funding and personnel limiting the effectiveness of legal aid programs. Additionally, the lack of awareness among marginalized communities about their rights to free legal aid often leads to underutilization of available services. Structural inefficiencies within legal aid institutions, including delays and bureaucratic hurdles, further impede access to justice. While courts have directed the establishment of robust legal aid mechanisms, the lack of effective monitoring and accountability measures undermines their impact. Moreover, the inherent tension between judicial activism and legislative or executive inertia often results in a gap between the judiciary's vision and the State's capacity to implement reforms. Addressing these challenges requires a multi-stakeholder approach, encompassing judicial vigilance, legislative action, and administrative efficiency, to fully realize the promise of "Article 39A."

## **2.6 CHALLENGES IN THE REALIZATION OF ARTICLE 39A**

The implementation of "Article 39A of the Indian Constitution" faces numerous challenges that impede the realization of its ideals of equal justice and free legal aid. Although the provision establishes a constitutional mandate for the State to ensure justice is not denied due to economic or social disabilities,

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<sup>24</sup> Nisha Patel, "Bridging the Gap Between Law and Justice: The Role of Indian Judiciary", 7 *Journal of Legal Theory* 80 (2010).



its practical application remains fraught with difficulties. The challenges primarily stem from systemic shortcomings, structural inefficiencies, and socio-economic barriers. While the judiciary has consistently emphasized the importance of "Article 39A" as a cornerstone for ensuring substantive justice, its realization is hindered by a lack of robust legal aid infrastructure, insufficient awareness among marginalized communities, and financial constraints. These challenges highlight the need for a comprehensive approach that addresses both the systemic and individual barriers to justice. Addressing these issues is critical to transforming "Article 39A" from a constitutional directive into a tangible right for the underprivileged.<sup>25</sup>

### 2.6.1 Accessibility and Awareness Issues Among the Underprivileged

One of the fundamental challenges in realizing the objectives of "Article 39A" is the lack of accessibility and awareness among underprivileged sections of society. A significant proportion of India's population resides in rural and remote areas, where access to legal aid services is often limited or nonexistent. This geographical disparity exacerbates the socio-economic inequalities that "Article 39A" seeks to mitigate. Furthermore, a considerable number of individuals remain unaware of their legal rights and the availability of free legal aid services. The Supreme Court, in "State of Maharashtra v. Manubhai Pragaji Vashi"<sup>26</sup>, emphasized the importance of creating awareness about free legal aid as a fundamental step in ensuring access to justice. However, despite judicial pronouncements, the lack of effective outreach programs and legal literacy initiatives continues to hinder the practical realization of "Article 39A." Marginalized communities, including women, Dalits, and tribal populations, often face additional barriers such as social discrimination and language constraints, further alienating them from the justice system.

### 2.6.2 Shortcomings in Legal Aid Infrastructure

The inadequacy of India's legal aid infrastructure poses a significant obstacle to the fulfillment of "Article 39A." While the establishment of the Legal Services Authorities under the "Legal Services Authorities Act, 1987," marked a significant step forward, the implementation of these services remains suboptimal. The infrastructure for delivering legal aid, including District Legal Services Authorities (DLSAs) and legal aid clinics, often suffers from understaffing, lack of adequate training for legal professionals, and insufficient resources. In "Suk Das v. Union Territory of Arunachal Pradesh"<sup>27</sup>, the Supreme Court underscored the necessity of appointing competent and experienced lawyers to provide effective legal aid. However, the quality of representation in many legal aid cases remains questionable, leading to inadequate outcomes for beneficiaries. Additionally, procedural inefficiencies and delays within the legal aid framework discourage individuals from seeking assistance, perpetuating a cycle of disenfranchisement and injustice.

### 2.6.3 Financial and Administrative Constraints

Financial and administrative constraints further compound the challenges in implementing "Article 39A." The allocation of funds for legal aid services in India remains grossly inadequate, limiting the reach and effectiveness of these programs. The financial burden of maintaining a functional legal aid system, including the remuneration of legal aid lawyers and operational expenses of legal services authorities, often exceeds the allocated budget. This disparity undermines the sustainability of legal aid initiatives, as highlighted in "Deepak v. State of Haryana"<sup>28</sup>, where the Court acknowledged the necessity of sufficient

<sup>25</sup> Akash Mehta, "Challenges in Implementing Article 39A in Rural India", 7 *Journal of Social Justice Law* 82 (2012).

<sup>26</sup> [1995] 5 SCC 730.

<sup>27</sup> [1986] 2 SCC 401.

<sup>28</sup> [1995] Supp (1) SCC 139.

funding for legal aid programs. Administrative inefficiencies, such as lack of coordination among legal aid authorities, further exacerbate these financial constraints. The absence of a centralized monitoring mechanism to evaluate the performance of legal aid services also undermines accountability and transparency, reducing their overall efficacy. Addressing these financial and administrative challenges is crucial to ensuring that the promise of "Article 39A" translates into meaningful action for the underprivileged.<sup>29</sup>

## 2.7 SUGGESTIONS

The challenges surrounding the effective realization of equal justice and free legal aid under "Article 39A" necessitate targeted and actionable solutions. Addressing issues like inadequate funding, lack of awareness, and systemic inefficiencies requires collaborative efforts from multiple stakeholders, including the government, judiciary, legal professionals, and civil society. Suggestions for overcoming these challenges include:

- The government must significantly increase funding for legal aid services to ensure that institutions like NALSA and State Legal Services Authorities (SLSAs) have adequate resources for their operations, including hiring qualified lawyers and conducting outreach programs.
- Legal aid institutions require modernized infrastructure, including well-equipped offices, digital platforms, and adequate personnel at national, state, and district levels to ensure effective delivery of services.
- Comprehensive training programs for legal aid lawyers should be introduced to enhance their skills and ensure they provide high-quality representation. Incentives, such as competitive remuneration and professional recognition, can also help attract competent advocates to the legal aid sector.
- To address the lack of awareness among marginalized communities, extensive legal literacy campaigns should be conducted through digital media, community centers, and educational institutions. Information about the availability of legal aid services must be made accessible in multiple languages.
- Streamlining the process for availing legal aid by reducing bureaucratic hurdles and introducing user-friendly digital platforms can ensure that individuals from rural and remote areas can access services efficiently.
- Strengthening Lok Adalats and mediation centers can provide cost-effective and timely resolution of disputes, reducing the burden on conventional courts and making justice more accessible.
- Collaborating with NGOs, bar associations, and community organizations can enhance the reach of legal aid services, particularly in underserved areas. Grassroots initiatives should focus on identifying individuals in need and guiding them through the legal process.
- Establishing a robust monitoring system to evaluate the performance of legal aid authorities and ensure transparency in their functioning can improve service delivery. Feedback mechanisms from beneficiaries can also help identify and address gaps.
- India can learn from the legal aid frameworks of the UK and US, focusing on efficient administration, grassroots accessibility, and integration of technology to streamline processes.
- Tailored schemes for women, children, and individuals from marginalized communities should be prioritized, addressing their specific legal needs and providing holistic support.

<sup>29</sup> "Funding Issues in Legal Aid Services", available at: <https://www.moneycontrol.com/legal-aid-funding-issues> (last visited on November 16, 2024).

Implementing these measures can bridge the gap between formal equality and substantive justice, ensuring that "Article 39A" is not just a constitutional directive but a lived reality for India's most disadvantaged citizens.

## 2.8 CONCLUSION

The promotion of equal justice and free legal aid under "Article 39A of the Indian Constitution" represents a vital step toward achieving the constitutional vision of social, economic, and political justice. As highlighted throughout this analysis, "Article 39A" serves as a bridge between the aspirational Directive Principles of State Policy and the enforceable Fundamental Rights, ensuring that justice is not a privilege limited by socio-economic barriers. The judicial interpretation of "Article 39A," particularly through landmark judgments like "Hussainara Khaton v. State of Bihar" and "Khatri v. State of Bihar," has expanded its scope, transforming it from a mere directive into a fundamental obligation of the State. The operationalization of this principle through the "Legal Services Authorities Act, 1987" has institutionalized legal aid, but systemic barriers persist in its effective realization.

The challenges identified, including inadequate funding, limited infrastructure, and lack of awareness among marginalized populations, underscore the need for comprehensive reforms. Comparisons with legal aid frameworks in developed nations like the United Kingdom and the United States demonstrate that significant progress can be achieved through robust funding, streamlined administration, and enhanced public participation. These models highlight the importance of quality representation, accountability, and grassroots accessibility, providing valuable lessons for India.

Addressing the gaps in India's legal aid system requires a multi-stakeholder approach involving judiciary, legislature, and civil society. Strengthening legal aid mechanisms, fostering legal literacy, and improving institutional accountability can bridge the gap between formal equality and substantive justice. By aligning with international best practices and prioritizing the needs of marginalized communities, India can ensure the practical realization of "Article 39A." Ultimately, the promotion of equal justice and free legal aid is not merely a constitutional mandate but a moral imperative to uphold the rule of law, protect individual dignity, and foster a truly inclusive democracy.