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# AN ANALYSIS: LEGAL AID IN THE CRIMINAL JUSTICE SYSTEM

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*The concept of seeking justice cannot be equated with the value of dollars.  
Money plays no role in seeking justice.*

- Justice Blackmun<sup>1</sup>

## ABSTRACT

Legal aid is a crucial pillar of the criminal justice system, ensuring that individuals from economically disadvantaged backgrounds have access to legal representation and a fair trial. This study examines the framework of legal aid in India, tracing its historical evolution, constitutional provisions, legislative enactments, and institutional supports being provided to the indigent person or to such person who cannot afford to hire a legal practitioner to defend their case. Apart from Constitutional provisions as provided in Article 39A, Article 14, Article 21 and Article 22(1), one important statute which cast obligation on State to provide free legal aid is the Legal Services Authorities Act of 1987. It highlights the significant role of the National Legal Services Authority (NALSA) in implementing legal aid programs and the various types of services provided. Despite the established framework, the legal aid system faces numerous challenges, including underutilization, quality of representation, bureaucratic delays, and socio-economic barriers that hinder access to justice for marginalized communities. Empirical evidence and case studies illustrate these challenges, emphasizing the need for reform. The study also focuses on comparative analysis of legal aid with international systems, suggesting that early access to legal aid can enhance the efficiency and fairness of the criminal justice process. Recommendations for reform include increasing awareness of legal aid services, streamlining application processes, improving the quality of representation, and enhancing funding and resources. Ultimately, the findings in the instant study suggest that effective legal aid is essential for upholding the principles of equality and justice in the criminal justice system, reinforcing the need for comprehensive reforms to ensure that all individuals can access their legal rights without financial constraints.

**Keywords:** Legal Aid, NALSA, Criminal Justice, etc.

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<sup>1</sup> *Jackson v Bishop*, 404 F.2d 571 (1968)

## **Introduction**

Legal aid refers to the provision of free legal services to individuals who are unable to afford legal representation and access to the courts. In India, the concept of legal aid is crucial for ensuring that justice is accessible to all, regardless of their economic status. It helps in safeguarding the rights of the marginalized and underprivileged sections of society, ensuring fair trials, and preventing wrongful convictions. Legal aid not only discharges the burden of Constitutional provision and obligation of the State to provide Legal aid to the person so entitled for the same but also helps in compliance of rules of natural justice by enabling the party to represent their case by way of legal representation. It is but obvious that compliance of rules of natural justice is mandatory for transparent, fair and effective administration of justice. Legal aid is not merely a charity but a fundamental component of the justice system, essential for maintaining the rule of law and upholding constitutional values.

Legal aid is a fundamental component of a fair and just legal system, particularly in the context of criminal justice. In India, the requirement for legal aid cannot be overlooked and is necessary as there is significant rise in number of under trial prisoners, many of whom belong to economically marginalized sections of society and cannot afford to hire a legal practitioner being an indigent person.

## **Research Objectives**

1. To study and examine the Constitutional and Statutory provisions relating to Legal Aid.
2. To study and examine the hierarchy of Legal Aid framework as provided under the Statute.
3. To study the relevant judicial pronouncements advocating to provide Free Legal Aid in India.

## **Research Methodology**

This research paper is based on doctrinal research with the help of literature, research paper and online resources available on the subject. The author has attempted to study and examine the concept of Legal Aid, its constitutional and statutory provisions and its applications in India

based on secondary data available in the form of various literature with due credit to the respective authors whose data has been relied upon.

## **Historical Background**

The concept of legal aid in India has evolved significantly over the years. India's journey towards establishing a robust legal aid system can be traced back to the post-independence era. The need for legal aid became increasingly apparent as the country sought to address social inequalities and ensure justice for all.

The first known mention of the legal aid movement dates back to 1851, when a French law was introduced to help the poor with their legal needs. In 1944, Lord Chancellor Viscount Simon appointed the Rushcliffe Committee to investigate the resources available in England and Wales for providing legal advice to the impoverished and to suggest any measures that seem desirable to guarantee that those in need of legal advice receive it from the State. This marked the beginning of the organised efforts by the British government to provide legal services to the poor and needy. Since 1952, The Indian government also began to address the issue of legal assistance for low-income individuals at various Law Commission and Law Minister conferences. The government created certain guidelines for legal aid programs in 1960. Thereafter, Legal Aid Boards, Societies, and Law Departments become functional and started providing legal aid to individuals in need through such programs in various states.

In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Hon'ble Mr. Justice P.N. Bhagwati then a Judge of the Supreme Court of India. The Committee for Implementing Legal Aid Schemes (CILAS) was formed and began overseeing legal aid initiatives across the nation. The implementation of Lok Adalats successfully gave litigants an additional forum for the resolution of their disputes and opened a new chapter in the nation's legal system.<sup>2</sup>

The enactment of the **Legal Services Authorities Act, 1987**, was a landmark in institutionalizing legal aid by creating the National Legal Services Authority (NALSA), State Legal Services Authorities (SLSAs) and District Legal Services Authority (DALSA). These bodies were assigned the responsibilities of overseeing the implementation of legal aid schemes

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<sup>2</sup> NALSA, About us, available at <https://nalsa.gov.in/about-us>, (last accessed on September 10, 2024)

and ensuring that legal assistance is available to those in need. This Act was finally made effective and came in to force from 9th of November, 1995 after certain amendments were incorporated therein by the Amendment Act of 1994<sup>3</sup>.

### Meaning of Legal Aid

Legal aid is means of providing legal services, assistance and representation to those who cannot afford it owing to one's financial incapacity. The idea of legal aid primarily works on the principle of equality before law and equal opportunities to represent one's case regardless of social or economic status. It also asserts that everyone should have a fair chance to enforce their rights and participate in legal proceedings.

It also premise that providing adequate means to any under privileged section of the society for equal and just representation. It encompasses a wide range of government policies, schemes and legislation which aim to bridge the gaps between the privileged section and the under privileged section by providing them with free legal help, advice and representation in litigating matters.

The Legal Service Authorities Act, 1987, under Section 2 (c) provides for “*‘legal Service’ which includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.*”<sup>4</sup>

In India, apart from government institutions, legal aid is being provided through specific legal aid organisations, pro-bono lawyers and NGO's, which work towards achieving ends of justice through proper administration of justice to the poor and underprivileged sections of society.

### Constitutional Mandate and Legal Aid

The right to get justice starts from the point when a person is either victimized by some unlawful act or is alleged accused of some unlawful commissions or omissions. We stay in a society governed by rule of law where in the basic canons of natural justice are given supreme value. The most important aspect of the concept of natural justice is, giving a person the right

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<sup>3</sup> *Id.*

<sup>4</sup> The Legal Service Authorities Act, 1987, § 2 (c), available at [https://www.indiacode.nic.in/bitstream/123456789/19023/1/legal\\_service\\_authorities\\_act%2C\\_1987.pdf](https://www.indiacode.nic.in/bitstream/123456789/19023/1/legal_service_authorities_act%2C_1987.pdf), (last accessed on September 10, 2024)

to be heard in fair trial. Fair trial within its very wide ambit incorporates many things, but most important of all these is the right to be represented by someone having knowledge of law.<sup>5</sup>

The *Preamble* to the Constitution of India aims to secure and provide social, economic and political justice to the all the citizens of India. It enshrines the principle of equality regardless of the status, opportunities and privileges of any person. Hence, in order to reduce systematic inequalities among the individuals, it is the prime responsibility of the State to provide legal aid services to the marginalised and under privileged sections of the society.

India is a country with poor and illiterate masses. Majority of the Indians are not aware of their legal and constitutional rights. Even if they come to know of their rights, they are in a helpless position because they cannot afford to engage the services of a legal counsel, which has become a costly affair. With a view to provide free legal aid to the deserving sections of the society, the Parliament of India has incorporated a specific Directive Principle viz., Article 39A by the 42nd Amendment of the Constitution in 1976.<sup>6</sup>

**Article 39A** provides that “*the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities*”<sup>7</sup>.

Further, **Article 14** makes it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity and fair representation by all. The State is under an obligation to uplift the disadvantages sections through various scheme and legislations.

Legal aid is not merely a legal service or representation, but it is the fundamental and constitutional right supported by **Article 21** of the Constitution of India. Article 21 of the Indian Constitution states that no person shall be deprived of his life or personal liberty except

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<sup>5</sup> Mukherjee Silky, Constitutional Provisions for Legal Aid in India, available at [https://www.probono-india.in/Indian-Society/Paper/35\\_CONSTITUTIONAL%20PROVISIONS%20FOR%20LEGAL%20AID%20-%20Silky%20Mukherjee.pdf](https://www.probono-india.in/Indian-Society/Paper/35_CONSTITUTIONAL%20PROVISIONS%20FOR%20LEGAL%20AID%20-%20Silky%20Mukherjee.pdf), (last accessed on September 10, 2024)

<sup>6</sup> *Id*

<sup>7</sup> The Constitution of India, Art. 39 A, available at: [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf), (last accessed on September 10, 2024)

according to procedure established by law. This means that no person should be deprived of his life and liberty without strict adherence to just and fair procedure and the same must not be arbitrary. It implies that the procedure to be adopted in courts should be just, to all parties to the suit or trial, as the case may be, and each one of them should have equal opportunities to represent their case.

The court while holding free legal aid as an integral part of Article 21 laid down two ingredients of a right to appeal.

1. Service of a copy of a judgement to the prisoner in time to enable him to file an appeal.
2. Provision of free legal aid to a prisoner who is indigent or otherwise disabled from securing legal assistance.<sup>8</sup>

Moreover, **Article 22(1)** provides that “*No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice*”<sup>9</sup>.

It is explicit that Article 22(1) guarantees the right to consult and to be defended by a legal practitioner of one’s choice, reinforcing the importance of legal representation in criminal proceedings.

Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society<sup>10</sup>.

A country like India, where poverty and illiteracy have permanent abode, we cannot think of a situation wherein a person who is a party to a suit or a criminal matter can represent him or can be part of hearing which is the most essential segment of natural justice, unless he is represented by someone knowing law, that is an advocate or a lawyer. As mentioned earlier in a country which is badly struck by poverty and destitution, very few of the grand citizenry can actually think of appointing a practicing lawyer paying hefty sum of money to represent his case. Though the advocates by virtue of professional ethics are supposed to take up the matter of anyone seeking their assistance, without considering how much they are going to be paid and

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<sup>8</sup> *M.H Hoskat v. State of Rajasthan*, AIR 1978 SC 1548

<sup>9</sup> *Supra* Note 7, Art. 22 (1),

<sup>10</sup> *Supra* Note 2,

what is the merit involved in the matter, yet in this era of dissolution of all ethics and virtue no one can demand the professionals of advocacy are any exception; and thus in recent times generally, the main motto of advocacy like any other profession is to earn money.<sup>11</sup>

### **Criminal Justice and Legal Aid**

Under the criminal justice system, the crimes are always presumed to have been committed against the State, save except those, which are committed against individual or property. This provision is based on the principle that it is the duty of the State to protect its persons. Thus, when State fails in its duty, it owes another duty towards victim to enable them to present their case.<sup>12</sup>

Accordingly, **Section 18<sup>13</sup> of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, [(erstwhile, Section 24 of Criminal Procedure Code (CrPC)], provides for the appointment of public prosecutors for the purpose of conducting in any court, prosecution, appeal or other proceedings. All the duties including salaries and emoluments to such public prosecutors are to be paid by the State.

Another noteworthy provision for legal aid as provided under **BNSS** is **Section 341**, (erstwhile, Section 304 of CrPC), which provides for appointment/assignment of an advocate by the Court, even to the accused person that too at the expense of the State, given the circumstances that the accused has not sufficient means to engage one.<sup>14</sup>

This provision is based on the Latin maxim *audi alterum partem* under the theory of natural justice which asserts that every person should have a reasonable opportunity to be heard and to present their case. Depriving an indigent person of presenting his case would be violation of principles of natural justice and would result in grave miscarriage of justice.

It is also well settled that the State cannot deny legal aid to an accused on the ground of financial hardships of the State. Legal aid is not just a statutory right under criminal procedure code but it is a constitutional mandate.

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<sup>11</sup> *Id*

<sup>12</sup> Sharma Vaidehi, Legal Aid Provision in India: An Overview, available at <https://legalonus.com/legal-aid-provisions-in-india-an-overview/>, (last accessed on September 10, 2024)

<sup>13</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, § 18

<sup>14</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, § 341

It may be noted that the Sessions Judge cannot thrust a counsel of his own choice and make the counsel defend the case against the will of the accused.<sup>15</sup> Thus the words ‘*of his own choice*’ in **Section 340**<sup>16</sup> of BNS extend to counsel appointed under **Section 341**.

The right to legal aid to the accused is not limited to the Stage of trial. It arises the moment he is arrested in connection with a cognizable offence.<sup>17</sup> But the said right is only for representing the accused in court proceeding. It does not extend to his interrogation in police custody.<sup>18</sup>

It is pertinent to note that a similar provision also exists in **Article 22(1)** of the Constitution of India as far as right to consultation and engagement of an advocate is concerned. However, the statutory provision in the present section cannot override the constitutional guarantee as provided under Article 22(1).

The Hon’ble Supreme in *Mohammed Ajmal Amir Kasab v. State of Maharashtra*<sup>19</sup>, held that it is duty of the Magistrates and Session Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State.<sup>20</sup>

## Legal Aid in Practice

### a) Structure and Administration

**NALSA:** The National Legal Services Authority (NALSA) plays a pivotal role in overseeing and coordinating legal aid services across India. Established under the Legal Services Authorities Act, 1987, NALSA is responsible for formulating policies, schemes, and programs to provide legal aid and ensure its effective implementation. NALSA collaborates with State Legal Services Authorities (SLSAs) and District Legal Services Authorities (DLSAs) to facilitate access to justice at various levels.

**SLSA:** State Legal Services Authorities (SLSAs) operate at the state level, coordinating with

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<sup>15</sup> *State v. Sidda*, 1975 CrLJ 1159

<sup>16</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, § 340,

<sup>17</sup> *Moti Bai v. State*, AIR 1954 Raj. 241

<sup>18</sup> Supra Note 8,

<sup>19</sup> *Mohammed Ajmal Amir Kasab v. State of Maharashtra*, AIR 2012 SC 3565

<sup>20</sup> *Id.*



district and local authorities to implement legal aid programs.

**DLSA:** District Legal Services Authorities (DLSAs) are responsible for providing legal aid services at the district level, including organizing Lok Adalats and legal aid clinics.

These authorities work in collaboration with various stakeholders, including non-governmental organizations (NGOs) and legal aid clinics at National, State and District levels.

Types of Legal Aid Services:

Legal aid services encompass a range of support mechanisms, including:

- i) **Free Legal Representation:** Providing legal counsel and representation in criminal cases.
- ii) **Legal Awareness Programs:** Educating the public about their legal rights and the availability of legal aid services.
- iii) **Legal Aid Clinics:** Establishing clinics in rural and underserved areas to facilitate access to legal assistance.

#### **b) Eligibility Criteria**

Eligibility for legal aid is primarily based on income levels, with individuals falling below the poverty line qualifying for assistance. Additionally, legal aid is available for women, children, SC/ST communities, industrial workmen, victims of trafficking, and persons with disabilities. Prisoners also have access to legal aid services, ensuring their rights are protected throughout their incarceration.

#### **c) Services offered by the Legal Services Authority**

- i. Payment of court and other process fee;
- ii. Charges for preparing, drafting and filing of any legal proceedings;
- iii. Charges of a legal practitioner or legal advisor;

- iv. Costs of obtaining decrees, judgments, orders or any other documents in a legal proceeding;
- v. Costs of paper work, including printing, translation etc<sup>21</sup>.

**d) Services offered by the Legal Services Authority**

Legal aid is not available in a case where proceedings of the case:

- i. Pertain to, wholly or partly, defamation, malicious prosecution, contempt of court, perjury;
- ii. relate to any election;
- iii. is for the offence against which fine imposed is not more than Rs.50/-;
- iv. is incidental to any of the matters mentioned above;
- v. in respect of economic offences and offences that are against social laws;
- vi. where the person applying for legal aid is not directly concerned with case and outcome of the case will not affect the interests of such person.<sup>22</sup>

**Role of Legal Aid in the Indian Criminal Justice System**

**a) Pre-Trial Stage**

Legal aid plays a crucial role in the pre-trial stage by ensuring that individuals are informed of their rights during arrests and interrogations. It provides legal representation at bail hearings, helping to secure fair bail conditions and protecting the rights of the accused. NALSA's initiatives, such as legal aid at police stations, aim to provide timely assistance to individuals at the earliest stages of the criminal justice process.

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<sup>21</sup> Rao Heta, Free legal aid and private legal services provided in courts with special reference to Gandhinagar District, International Journal of Research in Humanities & Soc. Sciences, Vol. 7, Issue: 3, March: 2019, ISSN: (P) 2347-5404 ISSN:(O)2320 771X

<sup>22</sup> Supra Note 19,

## **b) Trial Stage**

During the trial stage, legal aid ensures that the accused receives competent representation, which is essential for a fair trial. Legal aid lawyers are responsible for defending the accused, cross-examining witnesses, presenting evidence, and making legal arguments. This representation is critical for upholding due process and ensuring that the trial is conducted fairly.

## **c) Post-Trial Stage**

Legal aid continues to play a significant role after the trial, assisting with appeals and post-conviction relief. It helps in challenging wrongful convictions, filing appeals, and representing individuals in parole hearings. NALSA's schemes for post-trial legal aid aim to address issues related to wrongful convictions and ensure that individuals have access to justice even after their initial trial.

## **Case Studies and Empirical Evidence**

Research and audits conducted by organizations such as Project 39A have revealed systemic issues within the legal aid framework. For instance, an audit of the Supreme Court Legal Services Committee highlighted severe delays and inefficiencies, leading to effective denial of the right to legal aid. Similarly, evaluations of district legal aid systems have pointed to underutilization and challenges in the quality of representation.

## **Judicial Pronouncements**

Some of the judicial pronouncement concerning with the Legal Aid are referred below;

### **1. M.H. Hoskot v. State of Maharashtra<sup>23</sup> (1978)**

In this landmark case, the Supreme Court held that the right to free legal services is an essential ingredient of "reasonable, fair, and just" procedure for a person accused of an offense and is implicit in the guarantee of Article 21 of the Constitution. The Court

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<sup>23</sup> *M.H Hoskat v. State of Rajasthan*, AIR 1978 SC 1548

mandated that indigent prisoners should be provided free legal aid at state cost for appeals against their convictions.<sup>24</sup>

## 2. **Hussainara Khatoon v. Home Secretary, State of Bihar**<sup>25</sup> (1979)

This series of cases highlighted the plight of under-trial prisoners and established the right to a speedy trial and legal aid as essential components of the right to life and personal liberty under Article 21 of the Indian Constitution. In this case It was brought to the notice of Supreme Court that most of the under-trials have already undergone the punishment much more than what they would have got, had they been convicted in the relevant charges without any delay. The prime reason for delay was inability of the under-trials persons to engage a legal counsel to defend them in the court and owing to their poverty and indigence. Thus, in this case the court held that Article 39A emphasized that free legal service was an inalienable element of “*reasonable, fair and just*” procedure and that the right to free legal services was inherently covered under the fundamental right and constitutional guarantee as provided by way of Article 21.<sup>26</sup>

## 3. **Khatri II v. State of Bihar**<sup>27</sup> (1981)

The Supreme Court reiterated the importance of legal aid and directed that the right to free legal services is a fundamental right of a person accused of an offense. The Court emphasized that it is the duty of the magistrate or the sessions judge before whom the accused appears to inform him about this right. In this case, the court answered the question the right to free legal aid to poor or indigent accused, who are incapable of engaging lawyers. It was determined that the state has a constitutional obligation to provide legal aid not only during the trial but also when the accused is first presented before the magistrate or during subsequent remands. This right cannot be denied due to financial constraints, administrative issues, or the fact that the accused did not request it. Magistrates and Sessions Judges are required to inform the accused of their rights. The right to free legal services is a fundamental part of a reasonable, fair, and just procedure for anyone accused

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<sup>24</sup> *Id.*

<sup>25</sup> *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98

<sup>26</sup> Dr G. Mallikarjun, LEGAL AID IN INDIA AND THE JUDICIAL CONTRIBUTION, available at <http://www.commonlii.org/in/journals/NALSARLawRw/2013/13.pdf>, (last accessed on September 11, 2024)

<sup>27</sup> *Khatri v. State of Bihar*, AIR 1981 SC 262.

of a crime and is implicitly guaranteed by Article 21. The state must provide a lawyer if the case circumstances and justice demands it. The state cannot shirk this responsibility by citing financial or administrative limitations or the lack of requests for legal aid from the prisoners.<sup>28</sup>

#### 4. **Sheela Barse v. State of Maharashtra<sup>29</sup> (1983)**

In this case, the Supreme Court recognized the need for legal aid for women prisoners subjected to custodial violence. The court mandated that the police must inform arrested individuals about their right to legal aid, thereby ensuring that vulnerable groups are not deprived of legal assistance from the outset of legal proceedings.<sup>30</sup>

#### 5. **Suk Das v. Union Territory of Arunachal Pradesh<sup>31</sup> (1986)**

The Supreme Court ruled that failure to provide legal aid to an indigent accused at State expense would vitiate the trial as unconstitutional. The Court held that the right to legal aid is a fundamental right under Article 21 and that the accused must be made aware of this right. While delivering the judgement, Justice P.N. Bhagwati, emphasized the importance of educating the impoverished about their legal rights, especially the right to free legal representation. He also noted that the majority of Indians living in rural areas lack literacy and are unaware of their legal rights. Even those who are literate are also ignorant of their legal rights and entitlements. Because of their lack of legal knowledge, they do not seek legal advice or consultation. Furthermore, they are incapable of becoming self-sufficient and are even unable to assist themselves due to their ignorance and illiteracy. That is why spreading the awareness and promotion of legal literacy has always been recognized as amongst the principal items of the program of the legal aid movement in the country.<sup>32</sup>

#### 6. **State of Maharashtra v. Manubhai Pragaji Vashi<sup>33</sup> (1995)**

In this case, the Supreme Court expanded the scope of legal aid by holding that the State is

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<sup>28</sup> Dr G. Mallikarjun, LEGAL AID IN INDIA AND THE JUDICIAL CONTRIBUTION, available at <http://www.commonlii.org/in/journals/NALSARLawRw/2013/13.pdf>, (last accessed on September 11, 2024)

<sup>29</sup> *Sheela Barse v. State of Maharashtra*, 1983 (SC) 378

<sup>30</sup> *Id.*

<sup>31</sup> *Suk Das v. Union Territory of Arunachal Pradesh*, AIR 1986 SC 991

<sup>32</sup> *Supra* Note 26,

<sup>33</sup> *State of Maharashtra v. Manubhai Pragaji Vashi*, 1996 AIR 1,

duty-bound to provide financial assistance to voluntary organizations and law colleges for imparting legal education and training paralegal workers to ensure that legal aid reaches the poorer sections of society.

#### 7. **Md. Hussain alias Julfikar Ali v. The State (Govt. of NCT) Delhi<sup>34</sup> (2012)**

The Supreme Court held that legal aid should be meaningful and effective, and the State must ensure that the legal aid lawyer assigned to the accused is competent and has the time to prepare the case adequately. The Court also stressed the importance of legal aid at all stages of criminal proceedings. The Supreme Court reiterated that if the adequate legal aid has not been provided to the accused during the trial, the same is violative of Article 21 of the Constitution of India.<sup>35</sup>

#### 8. **Mohammed Ajmal Amir Kasab v. State of Maharashtra<sup>36</sup> (2012)**

The Supreme Court, in this case, involving the 26/11 Mumbai attacks, reiterated the necessity of providing competent legal aid to the accused, ensuring that the right to a fair trial is upheld. The case highlighted the importance of providing skilled and qualified lawyers to handle complex criminal cases.<sup>37</sup>

#### 9. **Anokhilal v. State of Madhya Pradesh<sup>38</sup> (2019)**

The present case is a straitjacket example wherein the Trial Court completed trial in 12 working days and inadvertently ended up circumcising the right of the accused to 'free' and 'sufficient' legal aid; in an attempt to deliver **expeditious justice**. The Supreme Court set aside the death sentence awarded to the accused due to the failure of providing proper legal aid. The Court observed that the right to legal aid is an essential part of a fair trial, and any deficiency in providing competent legal aid can vitiate the trial. The Court directed a de novo consideration of the case. The premise of the decision was the argument that the appellant in this particular case should have been given enough time to research the issue and that the infringement on that right led to an injustice. The Supreme Court held that an

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<sup>34</sup> *Md. Hussain alias Julfikar Ali v. The State (Govt. of NCT) Delhi*, (2012) 2 SCC 584

<sup>35</sup> *Supra*.

<sup>36</sup> *Mohammed Ajmal Amir Kasab v. State of Maharashtra*, AIR 2012 SC 3565

<sup>37</sup> *Id.*

<sup>38</sup> *Anokhi Lal v. State of Madhya Pradesh*, AIR 2020 SC 232

attempt at expeditious disposal of a case should not be done at the cost of the basic elements of fairness and the opportunity to the accused, on which premise, the entire criminal administration of justice is founded.<sup>39</sup>

### **Challenges in the Legal Aid System**

Despite the established framework, the legal aid system in India faces several challenges:

1. **Underutilization of Legal Aid Services:** Many eligible individuals are unaware of their right to legal aid or face bureaucratic hurdles in accessing these services. Reports indicate that a significant portion of under-trial prisoners do not utilize legal aid due to lack of information or trust in the system.
2. **Quality of Representation:** Concerns about the quality of legal representation provided under the legal aid scheme persist. Many legal aid lawyers are overburdened with cases, leading to inadequate preparation and representation in court.
3. **Bureaucratic Delays:** The application process for legal aid can be cumbersome, resulting in delays that can adversely affect the rights of the accused. This is particularly critical in criminal cases where timely legal assistance is essential.
4. **Socio-Economic Barriers:** Economic and social barriers continue to hinder access to legal aid. Marginalized communities may face additional challenges, such as language barriers and lack of trust in legal institutions.

### **International Perspectives on Legal Aid**

Comparative analysis of legal aid systems in other jurisdictions can provide valuable insights for reforming the Indian legal aid framework. For example, countries like the United Kingdom and Canada have established comprehensive legal aid systems that prioritize early access to legal assistance, ensuring that individuals receive support at critical stages of the criminal justice process.

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<sup>39</sup> Kaur Sarabjit, Case Analysis: Anokhi Lal v. State of Madhya Pradesh, AIR 2020 SC 232, available at <https://www.legalserviceindia.com/legal/article-4380-case-analysis-anokhi-lal-v-state-of-madhya-pradesh-air-2020-sc-232.html>, (last accessed on September 11, 2024)

From a human rights perspective, international instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) affirm the right to a fair trial and access to legal representation. These international norms influence domestic legal aid provisions, reinforcing the importance of legal aid as a fundamental right.

### **Recommendations for Reform**

To enhance the effectiveness of legal aid in the criminal justice system, several reforms can be considered:

1. **Awareness and Outreach Programs:** Implementing targeted awareness campaigns to educate marginalized communities about their legal rights and the availability of legal aid services.
2. **Streamlining the Application Process:** Simplifying the application process for legal aid to reduce bureaucratic delays and improve accessibility.
3. **Quality Assurance Mechanisms:** Establishing standards for legal aid representation and providing ongoing training and support for legal aid lawyers to enhance the quality of legal services.
4. **Technology Integration:** Use of technology advancement to provide online legal assistance and virtual consultations, making legal aid more accessible.
5. **Increased Funding and Resources:** Allocating sufficient financial resources to legal aid programs to ensure that they can effectively meet the needs of the population.
6. **Collaboration with NGOs and Community Organizations:** Partnering with NGOs and community organizations to expand the reach of legal aid services and address specific needs within communities.

### **Conclusion**

Legal aid is not a charity or bounty, but is an obligation of the State and constitutional and fundamental right of the citizens. The prime object of the State should be to look in to the



affairs of the administration of justice and ensure that just, fair and equal opportunities are provided to all, without any relation to their social, economic or political status. Thus, legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to all individuals and especially to those who come from the marginalised sector and weaker sections of the society.

Legal aid is a fundamental component of the Indian criminal justice system, which ensures that all individuals, regardless of their economic status, have access to justice and equal standing before the law. The historical evolution, legislative enactments, and practical implementation of legal aid reflect its importance in upholding constitutional mandate and ensuring a fair, transparent and equitable legal system. India has made significant strides in establishing a legal aid framework, however, challenges like under utilization of legal aid services due lack of awareness in the society, lack of quality representation, bureaucratic delays and overcoming socio-economic barriers etc. are few of the stress areas which need wider consideration and need to be addressed to realize the true intent and potential of noble idea of providing legal aid. By implementing targeted reforms and fostering collaboration among stakeholders, we can strengthen the framework and mechanism of providing legal aid services to the marginalised sections of the society and indigent accused system and enhance the protection of rights for all citizens.

## **Bibliography**

### **Statutes:**

1. INDIA CONST. art. 14,
2. INDIA CONST. art. 21,
3. INDIA CONST. art. 22 (1)
4. INDIA CONST. art. 39A
5. The Legal Service Authorities Act, 1987, § 2 (c), available at [https://www.indiacode.nic.in/bitstream/123456789/19023/1/legal\\_service\\_authorities\\_act%2C\\_1987.pdf](https://www.indiacode.nic.in/bitstream/123456789/19023/1/legal_service_authorities_act%2C_1987.pdf), (last accessed on September 10, 2024)
6. Bharatiya Nagarik Suraksha Sanhita, 2023, § 18
7. Bharatiya Nagarik Suraksha Sanhita, 2023, § 34o
8. Bharatiya Nagarik Suraksha Sanhita, 2023, § 341

### **Case Laws:**

1. Jackson v Bishop, 404 F.2d 571 (1968)
2. M.H. Hoskot v. State of Maharashtra, AIR 1978 SC 1548
3. State v. Sidda, 1975 CrLJ 1159
4. Moti Bai v. State, AIR 1954 Raj. 241
5. Mohammed Ajmal Amir Kasab v. State of Maharashtra, AIR 2012 SC 3565
6. Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 98
7. Khatri v. State of Bihar, AIR 1981 SC 262
8. Sheela Barse v. State of Maharashtra, 1983 (SC) 378

9. Suk Das v. Union Territory of Arunachal Pradesh, AIR 1986 SC 991
10. State of Maharashtra v. Manubhai Pragji Vashi, 1996 AIR 1,
11. Md. Hussain alias Julfikar Ali v. The State (Govt. of NCT) Delhi, (2012) 2 SCC 584
12. Anokhi Lal v. State of Madhya Pradesh, AIR 2020 SC 232

**Journals:**

1. Rao Heta, Free legal aid and private legal services provided in courts with special reference to Gandhinagar District, International Journal of Research in Humanities & Soc. Sciences, Vol. 7, Issue: 3, March: 2019, ISSN: (P) 2347-5404 ISSN:(O)2320 771X.

**Online Resource:**

1. NALSA, About us, available at <https://nalsa.gov.in/about-us>, (last accessed on September 10, 2024)
2. Mukherjee Silky, Constitutional Provisions for Legal Aid in India, available at [https://www.probono-india.in/Indian-Society/Paper/35\\_CONSTITUTIONAL%20PROVISIONS%20FOR%20LEGAL%20AID%20-%20Silky%20Mukherjee.pdf](https://www.probono-india.in/Indian-Society/Paper/35_CONSTITUTIONAL%20PROVISIONS%20FOR%20LEGAL%20AID%20-%20Silky%20Mukherjee.pdf), (last accessed on September 10, 2024)
3. Sharma Vaidehi, Legal Aid Provision in India: An Overview, available at <https://legalonus.com/legal-aid-provisions-in-india-an-overview/>, (last accessed on September 10, 2024)
4. Dr G. Mallikarjun, LEGAL AID IN INDIA AND THE JUDICIAL CONTRIBUTION, available at <http://www.commonlii.org/in/journals/NALSARLawRw/2013/13.pdf>, (last accessed on September 11, 2024)
5. Kaur Sarabjit, Case Analysis: Anokhi Lal v. State of Madhya Pradesh, AIR 2020 SC 232, available at <https://www.legalserviceindia.com/legal/article-4380-case-analysis-anokhi-lal-v-state-of-madhya-pradesh-air-2020-sc-232.html>, (last accessed on September 11, 2024)