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# Failing Legal Aid System in India: Possible Solutions

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## ABSTRACT

*It is undoubtedly true that access to justice is not available to everyone in our country and remains elusive for many given the socio-economic disparities along with the complexities of the judicial system of India. Legal aid is the tool which serves as a bridge, seeking to ensure a judicial system which is fair and offers equal level of access to everyone. The Constitution of India makes way for a mandate for the nation to provide for legal aid to make certain that there is no denial of access to the judicial system to any of the citizens of the country by means of motive of financial or different disabilities. However, in spite of the laudable framework in place for provision of legal aid in India, the system is failing-diseased by a number of demanding situations which make it a difficult task for such system to fully realize its potential and act as an essential pillar of an equitable and just society. The present paper seeks to shed light on the legal aid system which is feeling and goes into the depths of the reasoning behind such failure. Further, we would be delving deeply into the impact which falls onto the vulnerable groups due to such failure of the legal aid system. This would help the reader analyse alternative solutions by looking at the problems faced by the said vulnerable groups. More importantly, the present paper would seek to present workable solutions to revive the legal aid system of India and ensure that justice is made equally accessible to all.*

**Keywords:** *legal aid in India, access to justice, resource scarcity, quality issues, accessibility, vulnerable groups, women, minorities, undertrials, solutions, public investment, performance-based incentives, technology, digital outreach, partnerships.*

## I. INTRODUCTION

The right to pursue justice for themselves is a right which is essential and accorded to one and all, enshrined in international legal framework and further woven into the very fabric of modern day societies proclaiming to be democratic. Unfortunately, for many, this pursuit remains a dream which is far-off, obscured by the difficult web of complexities in law and hampered by means of the ground realisms of disparities of economic and social nature. It is at such point wherein the concept of legal aid come in- which is envisioned to act as an essential connecting

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point throughout the abyss of inequalities, seeking to ensure fair and equal access to justice for one and all.

Legal aid is envisioned to transcend the mere provisions of representation in the legal field. It is sought to empower litigants, especially the ones hailing groups which are and from backgrounds which are disadvantaged, so as to be able to navigate the difficulties of the judicial system and fight for rights nested in law of the land. It seeks to foster an experience of agency, helping them to stand with their counterparts who may be wealthier while pursuing for justice, and thus defending the center precept of “equality before the law”.<sup>2</sup>

India being the biggest democracy of the world, does acknowledge the pivotal function of legal aid whilst seeking to uphold the principles stemming from the Constitution of India. Articles 14 and 22(1) of the Constitution of India seek to guarantee “equality before the law”<sup>3</sup> and the “right to life and personal liberty”<sup>4</sup>, respectively. Such rights deemed to be fundamental are further reinforced under Article 39A, wherein there is a mandate for the nation to provide for legal aid to make certain that there is no denial of access to the judicial system to any of the citizens of the country by means of motive of financial or different disabilities.

Such a mandate by way of the constitution does establish legal aid as not only a mere measure of welfare for the citizens of the country, but more importantly as an essential pillar of an equitable and just society. It has been recognized that the absence of aid in the judicial system could render rights stemming from the Constitution and subsequently other laws to be meaningless, leading to a system wherein justice would become only a privilege for the rich and mighty, leaving the susceptible defenseless and exposed to the uglies of the judicial system.

Converting the mandate of the constitution, the right of legal aid has been converted into a tangible reality by way of the Legal Services Authorities Act of 1987. Such landmark piece of legislation sought to establish a tiered structure of authorities for legal aid, ranging from the countrywide authority called the “National Legal Services Authority” (NALSA) on the top, running all the way down to State level, District level, and bottoming out at the Taluk level. Such a complete set of communities is aimed at ensuring the accessibility of offerings of legal aid to each and every citizen, irrespective of their geographical region or socio-financial historical past.

The Act contains an extensive range of offerings, consisting of the legal representation in the

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<sup>2</sup> Raman Mittal, (2012lan) “*Legal Aid: Catalyst for Social Change*”, Satyam Law International.

<sup>3</sup> Maneka Gandhi v Union of India, (1978) 1 SCC 248.

<sup>4</sup> Francis Coralie vs. Union Territory of Delhi, 1981 AIR 746.

court docket proceedings for no cost, payment of expenses of the court and other ancillary charges incurred in the course of proceedings, recommendation of law as well as counseling and awareness packages and campaigns for literacy of law.

Howsoever, in spite of the laudable frame-work established within the Act, the implementation of legal aid in India, in an effective manner, is faced with numerous demanding situations, impeding its potential to fully realize its capability and thereby stand true at the promise of achieving such access to the judicial system which could be deemed to be equal in true sense.<sup>5</sup> The demanding situations form the core of our research paper herein, demanding our attention and necessitating solutions which are innovative enough to bridge the space between the ideal as well as the ground reality.

The promise of the Act of 1987 tends to resonate with an ideal which is noble: a judicial arm of the state wherein justice triumphs over circumstances and wealth, a system wherein each and every citizen is able to steer the difficulties of the legal nitty-gritties with same ease. Unfortunately, the reality is rather different and harsh. Even though the aforementioned frame-work does exist, the path to gratifying such promise is diseased via abundant obstructions, depicting the ideal of access to the judicial system which may be deemed to be equal, a reality which is increasingly for plenty.<sup>6</sup>

Consequently, the core research question throughout this present paper would be as to how the legal aid system of India is failing to attain its dreams, and what are the possible solutions which may be carried out to titivate its usefulness. With the aid of dissecting the inadequacies in the modern legal system and methodically thinking about possible solution(s), it is aimed to pave the manner for a legal aid system which surely stands true to its mandate by the Constitution of India and empowers each and every citizen of our country.

## II. CHALLENGES OF THE CURRENT LEGAL AID SYSTEM

There is little doubt about the fact that the present legal aid system is diseased with a myriad of issues. In the present section, we would be detailing out some of these issues, focusing on the major issues at hand. The noble idea and prescient of the legal aid machinery in our country which is to ensure access to justice which could be deemed to be equal for one and all – seems to stumble at their very first actual roadblock: scarcity of resources. A cavernous abyss exists between the manpower currently, infrastructure, as well as economic situation, and the urgent

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<sup>5</sup> Routh, Supriyo. “*PROVIDING LEGAL AID: SOME UNTRIED MEANS*”. *Journal of the Indian Law Institute* 50, no. 3 (2008): 375–90.

<sup>6</sup> Sood, S. (2019). “*Convergence in the Practice of Legal Aid to Improve Access to Justice*”. *Asian Journal of Legal Education*, 6(1–2), 18–28.

need for such resources to efficaciously serve a populace which is by all means diverse and vast.

In terms of manpower, India falls woefully short. Currently, there is one lawyer (specializing in legal aid) per 18,609 people or five of such lawyers per 1,00,000 people.<sup>7</sup> This is an abysmal figure looking at our population size. Such deficiency has a direct impact on the delivery of service. Overloaded lawyers have to represent a number and variety of cases which are deemed to be unmanageable, thereby leading to a compromise in the high-quality of representation for every client approaching them. Consultations which are rushed, interactions which are limited, and preparation which are inadequate have, unfortunately, come to be the norm, and in addition put at risk the interests and rights of those searching for legal aid. The resonance of such inequality resonates throughout the judicial arm of the state, thereby preserving the very biases the machinery is seeking to resolve.<sup>8</sup>

The physical infrastructure which is supposed to support the legal aid machinery in our country is the next set of impediments in our path towards the ideal form of judicial arm of the state. Many of the offices for legal aid are found lacking in primary services like that of computer systems, internet, printers, and even good enough fixtures. It is the absence of adequate legal repositories as well as research centers which tend to severely hinder potential of a lawyer to prepare for the proceeding successfully, gain access to legal repositories, and be abreast of frequent modifications within the regulations. Such “digital divide” works to further marginalize rural places of work, worsening the choppy allocation of resource(s) and leaving limitless people deprived of even minimum levels of legal aid.

Being underfunded on a level which could be termed to be “chronic”, plagues the system of legal aid in our country, thereby bringing an impact on each aspect of delivering on the promised services of a lawyer. Compensation levels for lawyers stay bleakly low, often failing to draw and preserve skilled specialists. Such results in an overreliance on lawyers who are yet to gain substantial experience which again leads to compromise in the value of representation in the court of law. Additionally, insufficient case prices restrict a legal professional’s capability to research cases, evidence gathering, and travel to satisfy customers, putting a damper on their efficacy inside the court.<sup>9</sup>

At the same time as resource shortages tend to cast a looming shadow over the judicial arm of

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<sup>7</sup> Mann, J.S. (2022). *“Comparative Legal Aid Systems and India”* (1st ed.). Routledge India.

<sup>8</sup> Voorhees, Theodore. *“Legal Aid in India: Past, Present and Future”* American Bar Association Journal 56, no. 8 (1970): 765–68.

<sup>9</sup> MOORE, SARAH, and ALEX NEWBURY. *“Legal Aid in Crisis: Assessing the Impact of Reform”*. 1st ed. Bristol University Press, 2017.

the State, another roadblock present before us is the chronic difficulty of concerns over quality. Even in such a situation wherein representation in the court of law is available to all, the quality of legal representation services tends to frequently fall short, resulting in the needy section of people feeling a hollow experience of justice served. The reasons for this are mainly linked to the low levels of compensation available to legal practitioners in this field, which makes it a deterrent for good legal practitioners to venture into the field.

Even if we assume that the legal aid system of our country could somehow conquer the two big obstacles presenting in the form of resource constraints as well as concerns over quality of legal practitioners, a powerful barrier nonetheless stands between needs groups of people and their right to judicial system: “accessibility”.

The promise of system of legal aid still stays enveloped within the mist of ignorance for long way too many. In marginalized groups and remote villages, there is little to no knowledge about rights with respect to legal aid and how such rights can be accessed or exercised.<sup>10</sup> Restrained levels of literacy, a marked deprivation of exposure to channels for proper education, anxieties around procedures with respect to law and courtroom and most importantly, digital divide make a significant contribution to this lack of understanding. Therefore, folks who stand to advantage maximum from this system of legal aid stay ignorant of its very existence which leaves them at risk of injustice and exploitation.

Such a marked lack of information and awareness gives birth to a vicious cycle. Devoid of know-how of their rights, people fail to seek out any assistance for law, going on to perpetuate the misconception that the judicial system is “inaccessible”. This goes on to further discourage campaigns for awareness and all efforts for outreach fall flat, proving to be even more complex to reach out to the ones in genuine need of legal aid.

Even for that part of the population which comes to be aware of the resource of legal aid, having access to it could prove to be daunting. The entire process of application for accessing the system of legal aid tends to frequently involve having to navigate a complicated bureaucratic labyrinth, stuffed with different forms, requirements for various documents, along with extensive procedural formalities. For people not used to jargon of law and with the administrative processes, such tricky procedures may be quite discouraging and overwhelming. Further, the shortage of language-unique paperwork and insufficient help for people who are illiterate similarly aggravate the problems, successfully hindering access for those who need the

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<sup>10</sup> Vibhute, K. I. “*Journal of the Indian Law Institute*”, vol. 47, no. 4, 2005, pp. 562–66. *JSTOR*.

system the maximum.<sup>11</sup>

Another one of the major systemic bottlenecks bothering the machinery for legal aid is the persistent problem of “judicial delays”. Proceedings tend to languish in courtrooms for year on year, confined in an intricate web of overburdened judges, various process and documentation related formalities, and adjournments.<sup>12</sup> Such agonizingly sluggish tempo of the judicial arm of the state influences the beneficiaries of the system of legal aid in a disproportionate manner, who tend to regularly lack the resources so as to pursue lengthy drawn-out courtroom proceedings.

The outcome of such delays tends to be numerous. They cause monetary hassle as clients encounter extended litigation costs, wear down faith and morale on the judicial system, and may even bring about the loss of significant evidence or the expiration of claims of legal nature. In quite many of the cases, the very intent behind this legal aid system for the purpose – securing redressal and justice – turns misplaced within the sands of time.

### **III. IMPACT OF FAILING LEGAL AID SYSTEM ON VULNERABLE GROUPS**

While we have explored till this point and concluded that yes, India’s legal aid system is indeed failing, we must now look at the impact the failing system has. For such, we must understand that while our judicial arm of the State does strive to be an ideal for providing equal level of accessibility in terms of justice, the tough fact does remain that there is social discrimination which casts a protracted shadow, intensifying the course to redressal in terms of legal representation for susceptible communities.

Women constitute as one of the most vulnerable communities and face tough barriers when trying to navigate the machinery of legal aid. Age-old patriarchal attitudes existing within society as well as the system of law themselves create numerous issues, frequently leaving them liable to injustice and exploitation.<sup>13</sup>

Prejudices and stereotypes formed in the society tend to have a significant impact on how cases brought forth by women are seen and dealt with by both attorneys as well as judicial officers-irrespective of their gender. Presumptions with respect to their integrity, know-how of the

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<sup>11</sup> Mann, Jeet Singh. “IMPACT OF COMPETENCY AND COMMITMENT OF THE LEGAL AID COUNSELS ON THE LEGAL AID SYSTEM IN THE CITY OF DELHI.” *Journal of the Indian Law Institute*, vol. 60, no. 2, 2018, pp. 200–15. *JSTOR*.

<sup>12</sup> Choudhury, Baidyanath. “LEGAL AID PROGRAMME AS AN INSTRUMENT FOR SOCIAL JUSTICE - AN INROAD IN INDUSTRIAL ADJUDICATION.” *Journal of the Indian Law Institute*, vol. 38, no. 2, 1996, pp. 243–48. *JSTOR*.

<sup>13</sup> Farzana Akter (2021) “The standard of assistance from legal aid lawyers: an Indian perspective”, *Indian Law Review*, 5:2, 189-209.

judicial mechanism, and even the credibility of their concerns more often than not result in a representation which is biased and decisions which are unfair.<sup>14</sup>

Women who seek for justice in the judicial system for instances of sexual attack, harassment for demand for dowry or domestic violence regularly face attitudes which are insensitive and insufficient help within the mechanism for legal aid. Given the definite lack of secure areas for women to talk openly about such experiences which are rather sensitive, coupled with the stigma related to taking up initiative to report such crimes, additionally tends to act as a deterrent for them to be able to reach out for assistance of legal nature.

Women folk, especially the ones hailing from regions which are rural or are from communities which are marginalized, additionally tends to lack the required tools for accessing information with respect to their rights as well as the process for registering a case or even applying for getting legal aid. Such marked lack of awareness yields them to be even more susceptible to abuse and deters their capacity to reach out to the judicial system to get justice.

An instance to look at herein is the infamous *Hathras case*<sup>15</sup> wherein, a female from the Dalit community in state of Uttar Pradesh was sexually violated by a group of men, and the accused were members of the upper caste with substantial influential in their community. In this case, the legal aid legal professional assigned to her case was reported to be extremely reluctant to fight for her case with all their might due to worry of negative outcome on themselves. This class of female population, comprising close to sixteen percent of female population of India are facing a “triple burden” of economic deprivation, gender biasness and caste discrimination, leading to an extremely sad state of affair.<sup>16</sup> Such a situation throws light on the presence of caste and gender discrimination in the machinery of legal aid, thereby bringing up the urgent need for sensitive dealing and devoted help for ladies from communities which are marginalized.

Furthermore, minorities in terms of religion in our country are regularly facing additional roadblocks when it comes to having access to legal resource offerings in terms of legal aid. Their vulnerability are further exacerbated due to various elements discussed herein. Minorities who speak a language aside from the “dominant vernaculars” tend to struggle to get access to their rights to useful resource like that of legal aid because of a loss of lawyers or translators who would be able to comprehend their language. Such a conversation would definitely lead to

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<sup>14</sup> Dhavan, Rajeev. “LAW AS STRUGGLE: PUBLIC INTEREST LAW IN INDIA.” *Journal of the Indian Law Institute*, vol. 36, no. 3, 1994, pp. 302–38. *JSTOR*.

<sup>15</sup> Soutik Biswas, “*Hathras case: Dalit women are among the most oppressed in the world*”, BBC India, 6 Oct 2020.

<sup>16</sup> Dr. Suraj Yengde, “Caste Matters”, Penguin Random House India, 22 Jul 2019.



misrepresentation of their issues, misunderstandings and in the end, a compromised result in the courtroom.

Biases present in opposition to minorities in terms of religion exist in the present state of our country, more than ever. The same is true for the judicial state of affairs as well and such biasness has an effect on how their issues are represented or judged within the courtroom. Presumptions with respect to their loyalties, their commitment to work together, or maybe even the credibility of their concerns could cause treatment, which is unfair.

Further, in situations of violence between communities, such minorities often tend to be met out with coercion and intimidation whilst looking for recourse in law. Such fear of retaliation deters them from gaining access to useful legal resources of legal aid and seeking justice in opposition to the offenders.

A 2020 report via the Human Rights Watch disclosed that mere one and a half per cent of prison lawyers for legal aid in our country are from the Muslim groups which is an indication of the gross under-representation of minorities within the machinery of legal aid themselves.<sup>17</sup> Such a definitive lack of range in addition impedes the capacity of the judicial system to address the specified desires and demanding situations confronted by minorities in terms of religion.

Another portion of the population suffering from the failing legal aid system are the undertrials. Such undertrials are often those who are unable to afford a lawyer by themselves. The modern infrastructural resources are insufficient to provide even a nominal representation in the court to all of such people waiting to be tried. Such shortages regularly end in lawyers who are burnt out, overworked by having to juggle multiple numbers of cases which in turn compromise their quality while representing people in court and hinder efficient defense of undertrials.<sup>18</sup>

There is a dire shortage of specialized legal professionals who specialize in legal aid and are adept in representing particular varieties of cases. Such attorneys who are not well trained and are given matters which are quite complicated legal issues which might also lead to battle to navigate procedures in the courtroom as well as legal nuances, thus resulting in delayed trials as well as possibilities which go unexplored for bail or other alternatives with respect to sentencing.

Insufficient investment for programs for legal aid tend to limit the sources for essential elements like that of research for the case, opinions by experts as well as securing testimonies from

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<sup>17</sup> HRW, "India Events of 2019", Human Rights Watch, 2020.

<sup>18</sup> RAGHAVAN, VIJAY. "Undertrial Prisoners in India: Long Wait for Justice." *Economic and Political Weekly*, vol. 51, no. 4, 2016, pp. 17–19. JSTOR.

witnesses. Such loss of support in terms of finance considerably weakens the defense by undertrials and further jeopardizes their probabilities of a trial which is at least speedy, let alone a timely release.

A 2021 report by the National Law University of Delhi found out that only point seven attorneys are there for a thousand undertrials in the machinery for legal aid in our country.<sup>19</sup> Such shocking statistics expose the tremendous gap which exists between the requirement and the provision of assistance in terms of legal resources, thus bringing into light the urging requirement for making the system at least usable.

#### **IV. WAY FORWARD AND SOLUTIONS**

We have already delved deep into the condition of the legal aid system in India, i.e. we already do have well understood problem and its consequences at hand. Now let us look at ways to solve it. India's system of legal aid which was supposed to be a symbol of hope for the communities which are unable to afford representation in the courtroom, is unfortunately standing on the brink of failure. The system's efficiency has been crippled by using persistent less funds, due to which legal professionals are underpaid and overworked, infrastructure is dilapidated, and crucial education programmes are completely out of reach. In order to surely make certain that everyone is getting the same right of access of justice for all, a substantial hike in investment in the legal aid system is mandatory.

Advocating for a growth in public investment which is progressive, with a minimum aim of doubling the allocation within, say, three years, could be a good strategy to provide relief and also set the inspiration for improvement which is sustainable. Such method approach a promise to improve the finances which are vital for the powerful functioning of the system of legal aid. Furthermore, featuring "targeted allocations" is vital while ensuring that specified funds are tagged for critical sections consisting of adequate compensation for lawyers, improvements in infrastructure, and programs for training. With the aid of channeling resources directly into these vital regions, the system of legal aid can address important desires and beautify its average ability.<sup>20</sup>

The creation of overall performance-based incentives for legal resource institutions emerges as a strategic flow into the strategy to be able to incentivize efficiency, satisfaction of the clients, and the successful outcomes of the case. By means of marrying investments to results which

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<sup>19</sup> NLUD, "Social Reality and Social Responsibilities of Law Students", Sage Journals, Journal of National Law University, Delhi, Vol. 8, Issue 1-2, June- December 2021.

<sup>20</sup> Jain, Mahak, "Access to Justice in India: A Critical Analysis", SSRN, January 23, 2021.

are measurable, the approach would no longer merely guarantee duty but also optimizes the usage of resources.<sup>21</sup> Organizations engaged in legal aid work could be endorsed to rationalize their procedures and attention on accomplishing outcomes which are more tangible, in the long run aiding a progressed and further client- centric model which is driven by fire to deliver optimum services to clients.

Further, making investment in technology- driven efficiency could be a strategy which is transformative for reforming the system of legal aid. Such includes the provision of resources in the direction of growing infrastructure for technology, which could include facilities for video conferencing, online management structures for cases, and information portals for legal aid. Such improvements in technology holds the capability of streamlining strategies, lessening prices for operations, and substantially enhance the overall efficiency of services to the clients. Such approach further aligns with the advancing panorama of judicial services and ensures that the system of legal aid stays adaptive and conscious of current requirements.<sup>22</sup>

Technology appears to be a tool which is powerful so as to allay the demanding situations which are posed by way of financial and geographic barriers which more often than not tend to prevent access to the legal aid system. Digital packages and e-submitting platform(s) tend to offer a manner which is transformative so as to increase services for legal aid to regions which are not served enough. By way of developing web sites for legal aid as well as apps for mobile in such languages which are vernacular, such structures serve as precious resources, providing critical guidance, data, and demystifying processes for filing cases for people in far off areas. Such intervention of technology allows the relationship amongst individuals who are in need and provide services of legal aid. Case in point herein would be “Nyaya Bandhu” mobile application in Rajasthan.<sup>23</sup>

The present paper isn't just an academic exercise; it is a “call for action”. The stage for efforts which are fragmented and resources which are inadequate has to be brought to an end. All of us must come collectively, so as to weave a radiant tapestry of the judicial arm of the state. Let us all campaign to increase investment in the judicial system, including technological advancements, weave partnerships which are markedly strong, and foster the seeds of systems for legal aid with access to one and all. It is only at such point that we would be able to virtually resolve the “threads of injustice” and sew together a community wherein the promise of justice

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<sup>21</sup> Supra note 6.

<sup>22</sup> Department of Justice, “Designing Innovative Solutions for Holistic Access to Justice”, <https://doj.gov.in/designing-innovative-solutions-for-holistic-access-to-justice-disha/>

<sup>23</sup> TATA Trusts, *India Justice Report 2019*, October 2019.

is not just a promise but is the truth for each and every person in the country, irrespective of their place or history.

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