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# Rationale and Concept of Free Legal Aid in India

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SANJAI SRINIVASAN S<sup>1</sup> AND V HARSHITAA SHRIEE<sup>2</sup>

## ABSTRACT

*This article critically analyses the concept of free legal aid in India and rationale behind the concept. The analysis covers the constitutional status provided to the concept along with the available statutory framework for effective implementation and governance of legal aid schemes and initiatives formulated by the state. The analysis made in this article substantially focuses on the authorities and their functions who are responsible for ensuring compliance with the constitutional and statutory obligations. Judicial interpretations are included in this article to substantiate the analysis. Legal awareness programmes conducted by the respective authorities and their impact on the legal assistance system of India is also discussed. The article also touches areas like procedure for applying to legal aid, Lok adalat, and the challenges faced in the implementation process. The key goal of this article is to effectively analyse in detail the above discussed aspects of free legal aid in India.*

## I. INTRODUCTION

All the citizens of India have been guaranteed the right to equality of position and opportunity as well as fiscal, social, and democratic justice under Indian Constitution. According to Articles 21 and 14, everyone has the fundamental right to access justice and receive equal treatment. In the current situation, many people cannot afford the luxury of obtaining justice. The constitutionally guaranteed fundamental rights will be directly violated if people are unable to obtain justice and a fair trial. Thus, the idea of free legal assistance developed to preserve the aforementioned vital rights as well as to close the gap between people and justice.

## II. CONSTITUTIONAL STATUS OF FREE LEGAL AID

By adding ‘Article 39A’<sup>3</sup> in the ‘Directive Principles of State Policy’ part through ‘42nd

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<sup>1</sup> Author is a Student at SRM Institute of Science and Technology, Kattankulathur, India.

<sup>2</sup> Author is a Student at SRM Institute of Science and Technology, Kattankulathur, India.

<sup>3</sup> Ind.Const.art.39A (42<sup>nd</sup> amdt. 1976), “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 because of economic or other disabilities.”

amendment' of Indian constitution in 1976, idea of free legal assistance was granted constitutionality. This was the starting point of development of welfare of people by mandating all the states to give free legal assistance to the common people.

In 'Hussainara Khatoon & Ors, vs. Home Secretary, State of Bihar, Patna'<sup>4</sup>, the Supreme court opined that the poor people have become more skeptical about our judicial system as they cannot afford the price for justice. The court stressed out to the government, the urgent need to introduce a comprehensive legal system that will reach out to the poor people which is not only enforcing equal treatment and entitlement to life under 'Article 14' & 'Article 21', but also the directive mentioned under Article 39A. The court further stated that equal justice should be applied in legality which can be done only by means of lawful schemes.

### **'Legal Service Authorities Act, 1987'**

'The Committee for Implementing Free Legal Schemes', or 'CILAS', was established in 1980 as a committee to supervise and track legal assistance activities nationwide, with P. N. Bhagwati serving as its head. Following this, 'the Legal Service Authorities Act' was passed in the year 1987, giving lawful aid initiatives that 'Article 39A'<sup>5</sup> directs to the states, a statutory structure. The Act was finally put into effect in 1995, thanks in large part to the efforts of Justice R.N. Mishra. Consequently, Justice K. Ramaswamy established the NALSA in 1995.

The fundamental tenets of 'Legal Service Authorities Act,1987'<sup>6</sup> are;

1. For guaranteeing legal assistance for most vulnerable members of the community out of free cost.
2. For planning and supervision of all legal aid activities.
3. Giving effect to legal aid programmes.
4. To develop principles and procedures to offer services in compliance with the act.
5. To establish a standardized network or channel that will allow for the nationwide provision of free legal service
6. The Act provides layout for formation of respective authorities in different levels across the country.

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<sup>4</sup> Hussainara Khatoon & Ors, vs. Home Secretary, State of Bihar, Patna (1979), 1979 AIR 1369.

<sup>5</sup> Ind.Const.art.39A (42<sup>nd</sup> amdt. 1976), "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 because of economic or other disabilities."

<sup>6</sup> Legal Service Authorities Act,1987.

There are thirty sections and seven chapters in the Act. ‘The National Legal Service Authority’ (NALSA) is placed in Chapter 2. By virtue of ‘Section 3 of the Act’<sup>7</sup> the Central Government may establish an organization called the National Legal Service Authority for fulfilling the obligations & tasks assigned in accordance with the discussed Act.

‘Section 2(a) of the Act’<sup>8</sup> states that any person shall avail legal aid for the purpose of a case or suits that are presented in a court and under ‘Section 2(aaa)’<sup>9</sup> the expression "court" can be any ‘tribunal’ or ‘authority’ established by any law in force, to carry out obligations that can be both judicial and quasi-judicial in nature, including civil, criminal, or revenue courts.

### **III. LEGAL SERVICE AUTHORITIES UNDER THE ACT**

1. ‘National Legal Service Authority: In accordance with Section 3 of the Legal Service Authorities Act of 1987’<sup>10</sup>, the centre is required to form a ‘National Legal Service Authority’ for the sake of performing the responsibilities and tasks assigned to the central authority. The executive chairman will be assigned by the president upon consulting with the highest judicial authority of India, and the centre selects the remaining members. The highest authority for this committee shall be the chief justice of India.

2. ‘Supreme Court Legal Service Committee – According to Section 3A of the Act’<sup>11</sup>, ‘Supreme Court Legal Service Committee’ will be set up by the union authority to accomplish all responsibilities specified in the regulations. The committee’s secretary is chosen by the highest judicial authority of India, and the head of the committee would be a current Supreme Court judge.

3. ‘State Legal Service Authority – Section 6 of the Act’<sup>12</sup> gives the state government the power to set up the State Legal Service Authority, which will execute the obligations given to the state authority in respect to the Act. Governor of the state will choose a sitting or retired judge as the executive chairman after consulting with the highest judicial authority of India. The government of respective state will appoint the other members. The highest authority under this body will be the chief justice of high court.

4. ‘High court Legal services Committee – Section 8A’<sup>13</sup> states that the state government will set up the high court legal service committee to undertake the roles and objectives that are

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<sup>7</sup> §3, Legal Service Authorities Act, 1987.

<sup>8</sup> §2(a), Legal Service Authorities Act, 1987.

<sup>9</sup> §2(aaa), Legal Service Authorities Act, 1987.

<sup>10</sup> §3, Legal Service Authorities Act, 1987.

<sup>11</sup> §3A, Legal Service Authorities Act, 1987.

<sup>12</sup> §6, Legal Service Authorities Act, 1987.

<sup>13</sup> §8A, Legal Service Authorities Act, 1987.

assigned from state authority. The chairman of the committee will be a sitting high court judge, and the secretary will be the one whom the highest judicial authority of the state.

5. 'District Legal Service Authority – Section 9'<sup>14</sup> states that in order for the district authority to perform the roles assigned to it, a 'District Legal Service Authority' must be formed for each district by the state government after consulting with the head Justice of the High Court. The district judge will act as this committee's highest authority, and the secretary should be a state judicial official with a position at least as high as subordinate or civil judge.

6. 'Taluk Legal services Committee – Section 11A'<sup>15</sup> confers the state government the power to form a 'Taluk legal service committee' for every taluk or for certain group of taluks. The ex officio chairman will be the individual who is the most experienced judicial officer of the jurisdiction of the taluk committee, and all the members are appointed by the appropriate government after certain consultation.

#### **IV. FUNCTIONS OF LEGAL SERVICE AUTHORITIES**

The above authorities have their own jurisdictions and responsibilities which are outlined in the Act. 'The legal service authorities Act prescribes the functions of central authority under section 4'<sup>16</sup>. The tasks are as follows:

- The duties encompass designing most effective and cost-efficient schemes for providing legal aid, formulate policies and guidelines for legal service, deploy funds of legal aid and distribute it, monitoring and executing legal aid schemes, organize legal aid camps, to carry out research in legal service field, take necessary steps for legal awareness generation particularly to economically weaker section, etc.

- The state authority has the responsibility to carry out the following responsibilities under 'section 7 of the Act'<sup>17</sup>. The role is, to provide legal aid to deserving persons, conduct Lok Adalat, formulate legal aid programmes, and to fulfil any other roles assigned by the state government.

- 'Section 10'<sup>18</sup> prescribes the duties of 'District legal service authority', such as performing the duties assigned by the authority of the state, plan and handle activities of Taluk committee and other legal bodies of the district, conduct Lok Adalat for respective district, to execute any other works that are prescribed by the state body.

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<sup>14</sup>§9, Legal Service Authorities Act, 1987.

<sup>15</sup> §11A, Legal Service Authorities of 1987.

<sup>16</sup> §4, Legal Service Authorities of 1987.

<sup>17</sup> §7, Legal Service Authorities of 1987.

<sup>18</sup> §10, Legal Service Authorities of 1987.

In the matter of ‘Suhas Chakma vs. Union of India & Ors.’<sup>19</sup> (2024), the highest court said that awareness is the key for the successful operation of the legal assistance mechanism, so for this sake the legal service authorities should provide a mechanism and the mentioned mechanism has to be updated in regular periodic intervals, so that the free legal assistance schemes would reach concerned people. Additionally certain steps have been outlined that include, publicity of legal aid awareness in public areas such as post office, police station, railway station etc., promotional campaigns to be carried out in local language through radio, in order to bring complete awareness about the legal aid schemes in rural areas through street corner plays etc.

## **V. REQUIREMENTS FOR QUALIFICATION OF FREE LEGAL AID**

‘Section 12 of the Legal Service Authorities Act,1987’<sup>20</sup>, stipulates the conditions for eligibility for free legal assistance. The provision mentioned above grants free legal assistance if the individual falls under any one of the following categories:

- People from Scheduled categories.
- Trans persons.
- Women.
- Children.
- Those affected by trafficking.
- Senior citizens.
- Workers in factories.
- Mass disaster victims (including industrial disasters).
- Disabled person.
- Economically backward class consisting of persons with low annual income, which varies across states. For instance, the upper income limit is ₹3,00,000 in Tamil Nadu for cases before any court other than Supreme Court.

## **VI. PROCEDURE FOR APPLYING LEGAL AID**

First, the authority having jurisdiction over the matter should be ascertained. Then the applicant may go directly to the respective authority and complete the form given to them and

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<sup>19</sup> Suhas Chakma vs. Union of India & Ors, 2024 INSC 813

<sup>20</sup> §12, Legal Service Authorities Act, 1987.

submit it along with all documents. In each legal service authority, there will be a front desk where the applicant may approach for assistance. The application can also be sent by mail or it may be filled up in the online portal of the NALSA website.

In the matter of ‘Rajoo vs. State of Madhya Pradesh’<sup>21</sup>, it was held by the apex court where out of free cost legal guidance should be made available to all low-income defendants, at all levels of the Indian governmental system, not just during the proceeding, regardless of seriousness of the offence against them. This Act and the Constitution does not distinguish between trial and appeal in order to provide free legal guidance to an accused individual or someone who has been detained. The legal services would be provided to a qualified person at every level from trial till appeal. Additionally, it should be noted that given the constitution emphasises ‘Article 39-A’<sup>22</sup>, legal aid or legal services is delivered to a qualified individual at no cost. Under ‘section 13 of the Act’<sup>23</sup> an individual is eligible legal services if all or any one of the conditions referred to in ‘section 12’<sup>24</sup> shall be eligible to be given legal services subject to the condition that the concerned person in charge is satisfied that such individual has a prima facie case to prosecute / defend.

#### **LOK ADALAT:**

According to the Legal Services Authority Act of 1987, Lok Adalat was formally created under the Act. The Act renders an award given by the Lok Adalat equal to the civil court ruling. It is the ultimate decision and it is legally binding on all parties involved, and court can’t hear an appeal.

‘Section 19 of Legal Service Authority Act’<sup>25</sup> held Lok Adalat for resolving ongoing cases and cases in the phase of pre-litigation under NALSA's direction. In 2022, Chapter VI A was introduced to the Legal Service Authority Act 1987 in order to provide a pre-litigative process for conciliation and conflict resolution pertaining to "Public Utility Services."

With regard to covid, concept of E Lok Adalat was framed which highly has enhanced accessibility of justice of individuals who could not attend Lok Adalat.

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<sup>21</sup> Rajoo vs. State of Madhya Pradesh, AIR 2012 SUPREME COURT 3034.

<sup>22</sup> Ind.Const.art.39A (42<sup>nd</sup> amdt. 1976), “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 because of economic or other disabilities.”

<sup>23</sup> §13, Legal Service Authorities Act, 1987.

<sup>24</sup> §12, Legal Service Authorities Act, 1987.

<sup>25</sup> §19, Legal Service Authorities Act, 1987.

## VII. LEGAL AWARENESS PROGRAMMES

The number of individuals benefited from the free legal assistance through its institutions under the Legal Services Authority Act 1987 has fallen significantly in 2024 from 2021, where in 2021 63,69,643 individuals were benefitted where as in 2024 only 2,25,025 individuals were benefitted. The cause of the precipitous decline is that money provided to legal service organizations to organize legal aid schemes has reduced from ₹1,45,30,00,000 in 2021 to ₹74,61,50,000 in 2024. The fund allocation has been reduced by 50% which reflects the inefficiency of the scheme. In rural India, 'The National Legal Services Authority (NALSA) organized a six-week Legal Awareness and Outreach program from October 2nd to November 14th, 2021, as part of the 'Azadi Ka Amrit Mahotsav' celebration'<sup>26</sup>.

This campaign tried to touch all the villages and towns of the country to increase the outreach the system and spread awareness of the complimentary legal assistance being provided. Since 2021, 18 webinars have been held online with the support of CSC e-Gov, as well as the different Ministries, Departments, and Civil Society Organizations (CSOs) So far, these webinars have reached more than 420,000 participants across different social media platforms. How many such campaigns have been done in Maharashtra and Kerala is not documented by NALSA<sup>27</sup>.

However, '14,400 villages of Maharashtra and 733 villages of Kerala were covered three times or more in the above-mentioned campaign. In addition, 37 Legal Services Mega Camps were organized in Maharashtra and 92 in Kerala, with 3,26,796 and 8,763 people, respectively'<sup>28</sup>, being benefitted. With regard to the possibility of scaling up such special campaigns, it is mentioned that State Legal Services Authorities can independently organize such programs. There is no proposal for conducting any special campaign at the national level presently.

In 'Suk Das & Anr. Vs. Union Territory of Arunachal Pradesh (1986)'<sup>29</sup>, the apex court had considered a question of legal assistance in the case where an accused person who was ignorant of his entitlement to unrestricted legal representation. As he was not informed of such assistance, the poor labourer was prosecuted without a counsel. As a result, the state is required to convey the poor person of their entitlement to free legal help under 'article 39 A of

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<sup>26</sup> National Legal Services Authority (NALSA), <https://www.nalsa.gov.in> (last visited July 22,2025).

<sup>27</sup> National Legal Services Authority (NALSA), <https://www.nalsa.gov.in> (last visited July 22,2025).

<sup>28</sup> National Legal Services Authority (NALSA), <https://www.nalsa.gov.in> (last visited July 22,2025).

<sup>29</sup> Suk Das & Anr. vs. Union Territory of Arunachal Pradesh, 1986 AIR 991.

the Indian Constitution'<sup>30</sup>. This case set a precedent availing justice is not only giving legal assistance but ensures that individuals who need it are aware of those rights, which remains very important to this day.

### **VIII. CHALLENGES IN IMPLEMENTATION OF LEGAL ASSISTANCE SCHEMES**

Following are the key factors which contributes for ineffectiveness of legal guidance programmes in India:

- General unawareness about existence of the 'Legal Services Authority Act'<sup>31</sup> particularly in rural India.
- Perception that quality of service in free legal aid lacks.
- Shortage of lawyers provided by legal service authority.
- Lawyers lack interest in helping because of economic reasons.
- Shortage in clinical legal institutions.
- Budget that goes to the legal service bodies for running legal aid programmes has reduced comparatively.

Another significant obstacle facing India's legal aid movement is the ineffectiveness of the structure in place for delivering legal help. More attorneys should be made understand the need to provide legal assistance out of free cost, and a movement should be initiated to convey to the public about these services. As far as people are ignorant of their fundamental privileges, the legal aid movement can never achieve its objective.

People with limited resources run the risk of being taken advantage of and eventually losing the benefits and rights granted by the law when they are unaware of their statutory rights. Therefore, increasing public awareness and streamlining delivery methods are the cornerstones of a successful free legal assistance program.

To make effective the provision of lawful assistance throughout the nation, it is necessary that the state should launch a campaign to invoke public awareness and educated about their rights in this legal system. Further, the government must implement more effective mechanisms for improving the delivery of legal aid, including, but not limited to, increasing remuneration for legal aid lawyers. Absent these actions, free legal help, as promised by the constitution, has

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<sup>30</sup> Ind.Const.art.39A (42<sup>nd</sup> amdt. 1976), "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 because of economic or other disabilities."

<sup>31</sup> Legal Service Authorities Act,1987.

not yet been fulfilled.

## **IX. CONCLUSION**

‘Article 39A’<sup>32</sup> and ‘Legal Service Authorities Act,1987’<sup>33</sup> came into force with the prime objective of filling the distance between the economically weaker section and justice. Legal aid is not charity; It is the duty of the state to make room for the people's rights. Realising distributive justice, effectively obtaining welfare payments, and eradicating systemic and societal discrimination against the impoverished are the main goals of legal assistance. Ensuring equality in every possible form especially in terms of justice should be the state's principal aim. The difference between the goals that are set and those that are achieved is enormous. The general lack of legal awareness in India is a significant barrier to the free legal guidance concept. Those who remain at large are still ignorant with respect to fundamental privileges, which has prevented the legal assistance movement from accomplishing its goals. People are denied the rights and privileges that they should have as disadvantaged individuals due to a lack of legal knowledge. In order to guarantee equitable access to justice and safeguard the rights of everyone, particularly those who belong to weak section of society, legal assistance is an essential part of the judiciary in India. For the sake of upholding the terms of statute and guarantee that justice is served for everyone, the system for legal guidance is essential.

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<sup>32</sup> Ind.Const.art.39A (42<sup>nd</sup> amdt. 1976), “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 because of economic or other disabilities.”

<sup>33</sup> Legal Service Authorities Act, 1987