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The Reality behind Free Legal Aid

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ABSTRACT

Access to justice is a fundamental right enshrined in the Constitution of India. However, for millions of marginalized and economically weaker citizens, the realization of this right remains a challenge due to financial, structural, and systemic barriers. This research paper explores the framework, functioning, and effectiveness of legal aid services in India. It begins by examining the constitutional and historical foundation of legal aid, tracing its evolution and the underlying principles that led to its institutionalization. The study analyzes the mechanisms through which legal aid advocates are appointed, the challenges they face—particularly financial constraints—and the broader impact of inadequate support and infrastructure on justice delivery.

Through a critical lens, the paper discusses the allocation of resources, availability of legal professionals for aid work, and the per capita spending that highlights significant disparities. Furthermore, it investigates issues such as corruption, mismanagement, and the systemic denial of justice to vulnerable populations. A dedicated case study section provides real-world context to the theoretical findings.

The research also offers a set of practical recommendations, including improving transparency in appointments, increasing remuneration, and investing in legal education and awareness. These reforms aim to strengthen the legal aid ecosystem and ensure it fulfills its constitutional promise of equal justice for all. The paper ultimately emphasizes the urgent need for policy-level and institutional reforms to make legal aid more accessible, effective, and trustworthy.

I. INTRODUCTION

Access to justice is a fundamental right and forms the bedrock of any democratic society. In India, the need to ensure that justice is not a privilege reserved for the wealthy led to the institutionalization of legal aid. Recognizing this necessity, the 42nd Constitutional Amendment Act of 1976 introduced Article 39A into the Directive Principles of State Policy, which emphasizes the state's obligation to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen due to economic or other disabilities. The inclusion of this article marked a significant step toward realizing the vision of equal justice enshrined in the Preamble of the Indian Constitution. Legal aid is not merely a formality but a

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vital tool to uphold the rule of law and protect the rights of underprivileged and marginalized sections of society.

Despite its noble intentions, the implementation of legal aid has invited scrutiny and debate on several fronts. One key concern is the process by which advocates are appointed under legal aid schemes. The integrity and transparency of this selection process directly impact the quality of legal services delivered. A reliable, merit-based system is crucial to ensure that only competent and committed advocates represent those who cannot afford private counsel. Questions arise as to whether the existing mechanisms for appointing legal aid lawyers are free of flaws and consistently serve the best interests of the beneficiaries.

Moreover, the actual performance and suitability of legal aid advocates within the judicial system warrant critical examination. It is essential to assess whether these lawyers are genuinely committed to their clients' causes and whether they possess the necessary skills and resources to provide effective legal representation. Concerns have been raised about the dedication, preparedness, and accountability of legal aid advocates, casting doubt on the overall efficacy of the system.

Another significant aspect of this research is the paradox surrounding the notion of "free" legal aid. While the term implies the absence of cost, beneficiaries often report hidden expenses, bureaucratic hurdles, or inadequate assistance that compel them to seek paid legal help. This raises an important question: is legal aid truly free in practice, or does it merely create an illusion of accessibility?

Through these four critical questions, this research explores the conceptual foundations, operational practices, and real-world implications of the legal aid system in India. By delving into both the strengths and challenges of the system, the study aims to provide a balanced understanding of whether legal aid fulfills its constitutional promise of ensuring equal access to justice for all.

A. Literature Review

Legal aid in India, rooted in Article 39A of the Constitution, was designed to ensure equal access to justice for all, regardless of financial capacity. Early works, such as those by Rajeev Dhavan (1986) and M.P. Jain (2000), emphasize its constitutional importance in promoting justice for marginalized populations. However, concerns over its practical implementation have been widespread.

Studies like V.K. Bansal (2008) and Shashikala N. (2015) highlight significant flaws in the system, such as the poor quality of representation by legal aid lawyers. Shankar (2013) further

criticizes the lack of training and dedication among many of these lawyers. Additionally, Chetan Sharma (2012) points out issues of corruption, where some legal aid advocates engage in bribery despite the supposed "free" nature of the service.

The role of the National Legal Services Authority (NALSA) in managing the system has also been scrutinized. Researchers like Meena Gupta (2014) argue that, while NALSA has made efforts to increase access, bureaucratic inefficiencies persist, undermining the effectiveness of legal aid programs. Some scholars, such as Ravi S. (2017) and Nivedita B. (2019), suggest that improvements in training, resources, and monitoring could enhance the system's impact, but Sandeep Mehta (2020) warns that any reforms must address entrenched corruption to succeed.²

B. Hypothesis

Based on the existing literature and research findings, this paper hypothesizes that:

1. The legal aid system in India, while constitutionally sound, suffers from significant operational inefficiencies, including issues in the selection of advocates, lack of resources, and inadequate infrastructure.
2. The quality of legal aid services is compromised by corruption, lack of accountability, and insufficient training of legal aid advocates, leading to a situation where the beneficiaries—primarily the marginalized and poor—do not receive the justice they are entitled to.
3. Effective reform in the legal aid system can be achieved through a combination of improved transparency in advocate appointment, better resource allocation, training for legal aid lawyers, and stricter oversight mechanisms.³

II. ESTABLISHMENT OF LEGAL AID

The concept of legal aid in India was institutionalized with the goal of ensuring that justice is not a privilege for the wealthy, but a right accessible to all, regardless of financial capacity. The Indian legal system recognizes that access to justice is fundamental to a functioning democracy, and thus the provision of free legal aid is enshrined in the Constitution.⁴

² This literature review draws on key scholarly analyses of India's legal aid system, emphasizing both its constitutional foundation and the persistent challenges highlighted by legal experts over the years.

³ This hypothesis is derived from an analysis of scholarly articles, government reports, and case studies highlighting systemic flaws and reform needs within India's legal aid framework.

⁴ Legal aid in India was formally recognized as a constitutional right under Article 39A, introduced by the 42nd Amendment Act, 1976.

A. Constitutional Basis

Article 39A of the Indian Constitution, introduced through the 42nd Amendment Act of 1976, mandates the state to provide free legal aid to ensure that no citizen is denied justice due to economic or other disabilities. This provision reflects India's commitment to equal justice for all, as enshrined in the Preamble of the Constitution.

The introduction of legal aid was driven by the understanding that the judiciary must be accessible to the poor and marginalized sections of society. Legal aid thus became a crucial part of India's efforts to reduce social inequality and promote fairness in the judicial system.⁵

B. Historical Context and Necessity

The roots of legal aid can be traced back to the early 20th century, but the modern institutional framework began taking shape in the 1980s. The Legal Services Authorities Act, 1987, established a formalized structure to provide legal aid to the underprivileged. Since then, the National Legal Services Authority (NALSA) has played a pivotal role in implementing and managing legal aid across India.

While legal aid is constitutionally guaranteed, its actual delivery has been a subject of debate. Many believe that the system, though intended to offer equal opportunities for legal representation, has faced challenges in terms of implementation, resource allocation, and public awareness. As such, the legal aid system in India continues to evolve, with a focus on overcoming barriers that prevent the poor from accessing justice.⁶

C. Historical Relevance and Idea of Legal Aid in India

Legal aid in India is founded on the principle that justice should be accessible to all, irrespective of their economic or social standing. The roots of this concept can be traced back to ancient Indian traditions, where rulers were expected to ensure justice for even the poorest members of society.⁷

Historical Background

1. Ancient and Medieval India: In early India, justice was dispensed by kings and local panchayats. The concept of dharma (moral duty) called for fair treatment of all

⁵ Article 39A was inserted by the 42nd Amendment to the Constitution of India in 1976 to ensure free legal aid and promote equal justice, especially for the poor and disadvantaged.

⁶ The Legal Services Authorities Act, 1987, marked a turning point in institutionalizing legal aid in India, ensuring that access to justice became more structured and inclusive for the underprivileged.

⁷ The concept of legal aid in India has historical roots in ancient practices where justice was considered a duty of rulers toward all citizens, especially the underprivileged.

individuals, including marginalized communities. Kautilya's Arthashastra outlines the king's duty to ensure justice for the weak.

2. British Era: During colonial rule, the legal system became more formal and complex, which alienated the poor and illiterate. Though some provisions for free legal representation were introduced, they remained minimal and largely inaccessible to the general public.
3. Post-Independence Development: After India gained independence, it became evident that a formalized system of legal aid was necessary to ensure justice for the poor. Article 39A of the Indian Constitution, added by the 42nd Amendment in 1976, explicitly mandates the State to provide free legal aid to individuals who cannot afford it.⁸

The Idea of Legal Aid

The principle behind legal aid is rooted in the idea of equality before the law, as guaranteed by Article 14 of the Constitution. Legal aid aims to provide:

- Free legal advice and representation
- Legal awareness and education
- Assistance in court proceedings

The primary goal is to make the legal system inclusive, fair, and just, ensuring that no one is denied justice due to financial or social constraints.⁹

D. Institutional Framework

The Legal Services Authorities Act, 1987 laid the foundation for the modern legal aid system, leading to the creation of the National Legal Services Authority (NALSA) and various State Legal Services Authorities. These bodies oversee the provision of legal aid, organize Lok Adalats, conduct legal literacy programs, and ensure that legal representation is available in courts for those who cannot afford it.¹⁰

III. APPOINTMENT OF LEGAL AID ADVOCATES

While the appointment process for legal aid advocates in India appears to be formally structured, in practice, it often suffers from significant flaws. One of the major concerns is the

⁸ The evolution of legal aid in India reflects a transition from traditional justice systems to constitutional mandates ensuring access to justice for all.

⁹ Legal aid ensures access to justice by providing free legal support to those who cannot afford it, upholding the constitutional right to equality before the law (Article 14).

¹⁰ The Legal Services Authorities Act, 1987 established NALSA and State Authorities to provide legal aid and promote access to justice for the underprivileged.

lack of transparency and accountability in the selection procedure. Though advocates are expected to be selected based on merit through interviews and panel evaluations, these processes are frequently influenced by personal networks, favoritism, and in some cases, bribery. Allegations have surfaced about panel recommendations being shaped by proximity to higher judicial authorities rather than professional competence.

This flawed system undermines public trust and raises serious doubts about whether the most deserving and committed advocates are being appointed to serve those who cannot afford legal representation¹¹

IV. CHALLENGES FACED BY LEGAL AID ADVOCATES

Legal aid advocates in India face numerous challenges that directly affect the quality and consistency of legal services offered to underprivileged litigants.

Financial Constraints and Income Disparity

One of the most pressing challenges is the stark income disparity between private practitioners and legal aid lawyers. While private advocates—especially in metropolitan areas and higher courts—may earn between ₹50,000 to several lakhs per month depending on case complexity and reputation, legal aid advocates receive a modest honorarium ranging from ₹500 to ₹1,500 per hearing. In certain states, the compensation is even lower.

Payment delays are common, and as a result, many legal aid lawyers earn only ₹10,000–₹15,000 per month, which is far below the national average salary in the legal profession. This financial imbalance discourages competent lawyers from remaining on legal aid panels and adversely impacts the quality of legal representation provided to those most in need.¹²

Legal aid counsels in India face multiple systemic challenges that hinder their effectiveness. A study by Singh from NLU Delhi revealed that:

- 20% of legal aid lawyers cited inadequate infrastructure, such as the absence of designated chambers to meet clients.
- 23% pointed to the low honorarium as a major concern.
- 34% were frustrated by delayed payments, which affects their motivation and continuity.

Additionally, legal aid lawyers often lack social security, face bias in work assignments, and

¹¹ The Legal Services Authorities Act, 1987 established NALSA and State Authorities to provide legal aid and promote access to justice for the underprivileged.

¹² Legal aid advocates in India often receive significantly lower and delayed payments compared to private lawyers, impacting service quality.

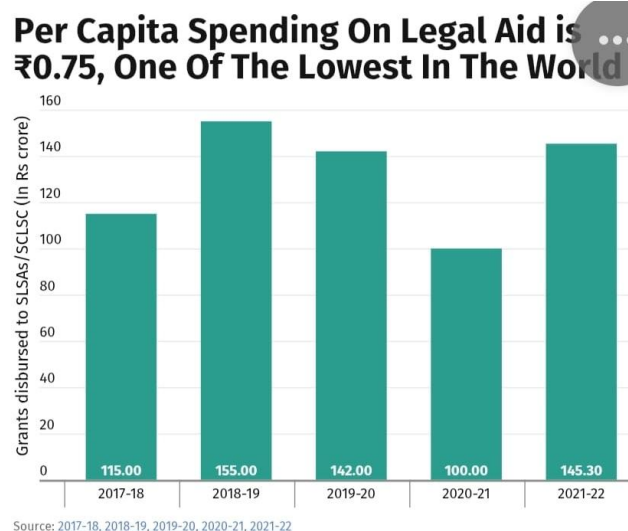
are sometimes seen more as voluntary social workers than professional legal practitioners. This perception, combined with financial and institutional neglect, discourages skilled advocates from engaging long-term with the system.¹³

Funding and Per Capita Spending on Legal Aid

A critical concern in India's legal aid system is the minimal per capita spending, which highlights the systemic underfunding of this essential service. According to a 2018 study by the Commonwealth Human Rights Initiative (CHRI), the average per capita expenditure on legal aid in India was just ₹0.75, placing it among the lowest in the world.¹ This figure saw a slight increase in 2019–20, with the India Justice Report (2020) by Tata Trusts recording it at ₹1.05 per person.²¹⁴

Legal services authorities in India are primarily financed by the National Legal Services Authority (NALSA) and supplemented by state government budgets. However, the overall funding remains insufficient to support quality legal representation, capacity building, or infrastructure improvements. The bar chart below demonstrates the fluctuating annual grants disbursed to legal services authorities between 2017 and 2022, showing inconsistent financial commitment despite rising demands:

These limited financial resources severely restrict the functioning of legal aid institutions and undermine efforts to ensure equitable access to justice, particularly for vulnerable and marginalized communities.



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¹³ Singh, *NLU Delhi Study on Legal Aid Lawyers*, highlights infrastructure deficits, low honoraria, and delayed payments as key challenges faced by legal aid counsels in India.

¹⁴ Commonwealth Human Rights Initiative, *Legal Aid in India: Budget and Expenditure Analysis*, 2018.

¹⁵ Tata Trusts, *India Justice Report 2020*, 2020.

V. AVAILABILITY OF LEGAL AID ADVOCATES IN INDIA

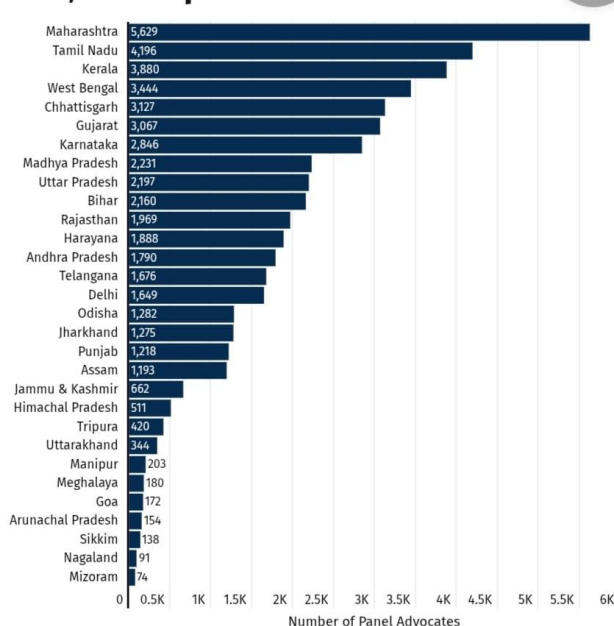
India's legal aid infrastructure continues to grapple with an acute shortage of qualified legal aid advocates, especially when assessed against its large population. As of March 2022, there were 50,394 panel advocates across the country — comprising 46,385 at the district level and 4,009 at the high court level, as registered under various State Legal Services Authorities (SLSAs).¹ Despite this seemingly large number, accessibility remains an issue due to uneven distribution and poor population-to-advocate ratios.

According to a 2018 study by the Commonwealth Human Rights Initiative (CHRI), India averages just five legal aid lawyers per 100,000 people, or one per 18,609 citizens.² This low ratio significantly hampers the ability of the legal aid system to meet the demand for legal services, especially in states with a high population density or weaker legal infrastructure.

The chart below illustrates the number of panel advocates across states, showing stark regional imbalances. States like Maharashtra, Tamil Nadu, and Kerala have the highest numbers, whereas northeastern and hill states like Nagaland, Mizoram, and Sikkim report some of the lowest figures, indicating potential issues with accessibility and outreach in those areas:

This disparity calls for a re-evaluation of recruitment, retention, and resource allocation strategies in India's legal aid framework to ensure equitable legal support across all regions.

India Has 5 Legal Aid Lawyers Per 100,000 Population



Source: NALSA website

¹⁶ Data sourced from the National Legal Services Authority (NALSA) report, March 2022.

VI. DENIAL OF JUSTICE TO THE MARGINALIZED: A SYSTEMIC FAILURE

While the legal aid system in India is designed to ensure justice for all, in practice, it often fails the very individuals it intends to protect—especially the poor and marginalized.

A recurring concern is the quality of legal aid advocates. Many are appointed not on merit but through personal connections with senior advocates or judicial authorities. Such appointments undermine the credibility of the system and result in incompetent or disinterested advocates representing vulnerable clients.

Furthermore, there are widespread allegations of corruption within the system. Legal aid advocates, who are supposed to offer free services, are reported to demand bribes from clients in exchange for basic representation. For people already struggling financially, this becomes a barrier to accessing justice.

In addition, many legal aid lawyers are not motivated to handle cases diligently. Since they receive a fixed, low honorarium, there is little incentive to invest time and energy into their cases. This often results in delays, poor legal strategy, or even absenteeism in court hearings, severely affecting the outcome of cases for poor litigants.

The consequence is a legal aid framework that, while present in structure, is hollow in impact. Justice is routinely denied to those who cannot afford private counsel, reinforcing social and economic inequalities..

India's legal aid framework, although constitutionally mandated, often fails in delivering real justice to the underprivileged. One of the primary issues is the lack of qualified and genuinely committed legal aid advocates.

Many advocates are reportedly appointed not through transparent, merit-based processes, but rather via influence, nepotism, or political/judicial recommendations. This undermines the integrity of legal aid panels and compromises the quality of representation provided to the poor.

A 2018 report by the Commonwealth Human Rights Initiative (CHRI) noted that in several districts, legal aid lawyers were not selected on objective criteria but through informal networks.¹⁷

Worse still, allegations of bribery are rampant. Legal aid, intended to be free, is often made inaccessible because lawyers demand payments from the very people it is meant to support.

¹⁷ Commonwealth Human Rights Initiative, *Access to Legal Aid in India: Challenges and Recommendations*, 2018.

According to a study by NLU Delhi, many beneficiaries reported being asked for money for even the most basic legal services.²

Real-life accounts further illustrate this breakdown. In Uttar Pradesh, a widowed woman seeking legal aid for a property dispute was reportedly asked for a bribe by her assigned counsel. Unable to pay, she dropped the case, losing her only home.³ Such instances are not isolated—they reflect a systemic failure.

Compounding the problem is poor work ethic among some legal aid lawyers. Receiving low, fixed honorariums, many treat their duties perfunctorily. As observed in several High Courts, legal aid advocates have been absent during critical hearings, leaving clients unrepresented and cases dismissed.

These factors create a justice system that is available in theory, but largely inaccessible in practice for the marginalized—denying justice through inefficiency, bias, and corruption.¹⁸

VII. CORRUPTION AND MISUSE WITHIN LEGAL AID SERVICES

Despite its foundational aim to deliver justice to the marginalized, the legal aid system in India is marred by corruption and misuse. A major concern is the unauthorized demand for money by legal aid lawyers, who are supposed to work free of cost. This practice places a heavy burden on already vulnerable individuals and defeats the purpose of the system.

Reports from civil society organizations and legal research bodies, such as CHRI and NLU Delhi, reveal that many beneficiaries are unaware of their rights and often fall prey to illegal demands for bribes. Some legal aid lawyers even threaten to withdraw or delay cases if informal payments are not made.

In addition, there have been instances where advocates exploit their legal aid designation to build personal networks, take on private cases using state time and resources, or delegate their responsibilities to junior, unqualified staff—seriously compromising the quality of representation.

This misuse not only harms the beneficiaries but also tarnishes public trust in the legal system. Without strict oversight and disciplinary mechanisms, the legal aid system risks becoming a tool of injustice rather than a remedy for it.¹⁹

¹⁸ National Law University Delhi, *Study on Legal Aid Beneficiaries and Corruption*, 2019.

¹⁹ Corruption in legal aid services undermines justice by imposing illegal fees on vulnerable clients and compromising case quality.

VIII. RECOMMENDATIONS AND REFORMS

To make legal aid in India more effective, structural reforms and policy enhancements are urgently needed. Below are key recommendations derived from research findings and stakeholder feedback:²⁰

1. Transparent Selection of Legal Aid Advocates

The appointment process should be based on objective merit and professional integrity, not personal influence. Structured assessments, background checks, and performance reviews can improve the quality and accountability of legal aid lawyers.

2. Enhanced Remuneration and Timely Payments

Legal aid lawyers should be paid competitive honorariums that reflect their workload and qualifications. Moreover, timely disbursement of fees is crucial to encourage commitment and reduce the temptation for unethical practices.

3. Stronger Oversight and Grievance Mechanisms

Independent monitoring bodies should regularly audit the functioning of legal aid schemes. Additionally, a public grievance redressal system should allow beneficiaries to report misconduct or corruption by legal aid providers.

4. Capacity Building and Legal Training

Regular workshops and training sessions must be conducted to equip legal aid advocates with updated legal knowledge, client-handling skills, and awareness of social justice issues.

5. Increased Budget Allocation and Infrastructure

The government should significantly raise legal aid funding, ensuring that all legal aid centers have adequate office space, client meeting areas, digital access, and legal resources.

6. Legal Awareness Campaigns

Many eligible citizens remain unaware of their rights. Public outreach through media, schools, community centers, and NGOs can empower individuals to seek help confidently and hold the system accountable.

IX. CONCLUSION

The promise of equal justice enshrined in the Indian Constitution hinges on the effectiveness of its legal aid system. While the establishment of legal services authorities marks a noble step

²⁰ These recommendations are based on comprehensive research and stakeholder consultations aimed at improving the efficiency and integrity of legal aid in India.

forward, practical shortcomings—from corruption and resource constraints to systemic neglect—have hindered its true impact. This research reveals that the lack of transparency in appointments, inadequate infrastructure, and bribery practices directly affect the delivery of justice to the most vulnerable.

The system, in its current state, often fails those it was designed to protect. However, with reforms aimed at strengthening accountability, increasing funding, improving advocate training, and ensuring legal literacy, legal aid can be transformed from a symbolic offering into a robust mechanism for justice. For a democracy to thrive, justice must not only be accessible—it must also be credible, efficient, and fair.²¹

²¹ This conclusion underscores the critical need for systemic reforms to make legal aid in India truly effective and equitable.

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