

THE STUDY OF FREE LEGAL AID IN INDIA: THE EVOLUTION OF JUSTICE

Ms. Purvi Panwar

Assistant Professor

Himachal Pradesh College of Law

ABSTRACT

Access to justice is universally acknowledged as a fundamental right and a precondition for the realization of human dignity. In India, this principle is firmly enshrined in the Preamble of the Constitution, which promises justice—social, economic, and political—to all citizens. Yet, the reality is stark: for the poor and marginalized, justice often remains a luxury, hindered by high legal costs, procedural complexities, and inordinate delays. Free legal aid emerges not merely as a welfare measure, but as a constitutional necessity to bridge this gap between constitutional ideals and lived realities.

The Indian Constitution, through its the reality of India's adversarial, expensive, and delayed judicial system makes justice a distant dream for the poor and marginalized. Free legal aid emerges as both a constitutional necessity and a moral imperative, ensuring that poverty, illiteracy, or social disadvantage does not bar a citizen from seeking redress. This abstract synthesizes the conceptual foundations, historical trajectory, statutory evolution, and literature review on free legal aid in India. When India's court system, lawyer appearances, and court fee structure were introduced, the official idea of legal assistance was born on Indian soil. Its foundations, however, lie in Indian society's attempts to uphold justice and in man's innate need for vengeance. In this way, the notion of legal help may be traced back to ancient society, which is believed to have started methodically in the Vedic era.

Keywords: Access to Justice, Free legal aid, National Legal Services Authority (NALSA), Welfare state, Equality before law

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

- Justice Blackmun

1. INTRODUCTION

Legal aid has historically been important in ensuring that social, and cultural rights and financial rights are respected in relation to the provision of social protection, affordable homes, social welfare, general wellbeing, and education services, both publicly and privately given, as well as employee rights and anti discrimination legislation.¹In India, legal aid has a long history and has developed over time to meet the needs of underprivileged and oppressed groups. The journey from the time before independence to the creation of an extensive legal aid framework in the post-independence era is covered by this historical perspective. Legal Aid in historical perspective is the focus of this chapter. It covers legal aid during the ancient, British, and post-independence eras as well as how it was included into the Indian Constitution. In India, the initiative of providing free legal aid to the impoverished is not just a pipe dream. Even going back in time, the legal aid philosophy systematically began with Vedic age in ancient Indian society.²

In growing democratic countries, the watchword is "toward equal justice," and the watchdog is "free legal service to the weak." The dedication to legal help is the trademark of a refined society in the current world. So much so that India's claim to be a modern and civilized society is dependent on certain policies, such as its national policy on equal protection of laws, which states that the poor cannot be denied justice and the rich have the monopoly of the law.³Justice and equity are the cornerstones of distributive, procedural, retributive, and restorative justice.

¹ F. Regan, *The transformation of legal aid: comparative and historical studies*. 89-90 (Oxford University Press, United Kingdom, 1st edn; 1990)

² Ravi Kumar Tyagi and Rajenderkumar, "Review of Judicial System in Ancient India" 3 LRD 05 (2018). Available at, <https://doi.org/10.53724/lrd/v3n1.02>. visited on 25-3-2025.

³ Bhagwati Committee Report on *National Juridicare: Equal Justice- Social Justice*, 85 August 31st, 1977.

Fairness and the tacit acceptance of equality are prerequisites for justice. The fundamental tenet of equitable justice for all, whether social, economic, or political, is the foundation of the Indian legal system. The free legal services movement was started to advance equal justice since the principles of natural justice for the poor cannot be implemented without sufficient legal services.

A state's capacity to guarantee sufficient legal assistance to the average citizen can be influenced by how the public views the welfare state's role. The government provides enough legal aid and legal help to those who otherwise unable to pay for legal counsel. Legal aid is crucial because it enables individuals to get adequate legal aid in the judicial system, which in turn enhances the possibility that social welfare commitments such as the supply of social housing will be satisfied.⁴ As was previously mentioned, Together with the rise of civilization and the concepts of thine and mine, the concept of "Legal Aid" also came into being on Earth. Ancient India was a wealthy nation with a traditional religious way of life that aided in the development of concepts like tolerance, acceptance, and brotherhood. The battle for survival was at its lowest, and there were very few conflicts. A style of life based on collaboration and respect for one another led to a higher moral compass. Because of their religious duties, the people were unable to take the fruits of other people's labor. As a result, numerous legal infractions brought on by abnormalities in human behavior remained unnoticed. Back then, living in harmony was important to all parties.⁵

2. MEANING AND CONCEPT OF FREE LEGAL AID

Dispensation of justice to all, irrespective of one's social ranking and economic status, is the true test of a government based on the rule of law.⁶ Justice is the utmost virtue of the human spirit, which conceives *fiat justitia ruat to elum*,⁷ is the epitome of all philosophies human beings have ever founded. The idea of justice is underlined in the maxim, *suum cuique tribure*.⁸ The conception goes back to the injunctions of ancient Egyptian or Hebrew law to administer the law impartially, 'to hear the small as well as great'.⁹ The Equality of Justice postulates that equality is both a means and an end of justice. "Equal justice" is the overarching concept shared by both terms. Nonetheless, the first phrase implies that everyone has equal access to the judicial system in order to receive a just and fair treatment.¹⁰ Legal aid has been recognized in the world over; as a mechanism to ensure easy and inexpensive access to justice and it has now been evolved as a distinct human right beginning its journey from charity-dependence on the altruistic impulses of church, kings, lawyers and individuals to a basic human right buttressed by the constitutions, statutes and international humanitarian law to realize the substantive human rights through its procedural arm.¹¹

2.1 Meaning of legal aid in India

Legal Aid is not a charity or a chance, but a constitutional mandate to the State and right of public which is not, now, option but constitutional obligation and compulsion. As such, it is not a project or a plan of Government, but people's movement. What is the use of legal system which eliminates, lowly and lost, poor and downtrodden and which creates distance between the law and justice.¹² Equal justice and fair trial are guaranteed by article 39A of the Indian Constitution. The state ensures that the legal system operates on the basis of equal opportunity and will, in particular, offer free legal aid through appropriate legislation and programs or in any other manner to guarantee that no citizen is denied the opportunity to obtain justice because of financial or other disabilities.¹³

⁴ R.Francis, *The transformation of legal aid: comparative and historical studies*.89–90 Oxford University Press,Oxford 1999.

⁵ Government of India, "Alternative Dispute Resolution" *Legal Aid News-letter* 13 (New Delhi, 1990).

⁶ S.K. Sharma, *Distributive Justice under Indian Constitution* 71 (Deep & Deep Publications, New Delhi, 1989).

⁷ Let the heaven fall, justice has to be done

⁸ To render to every man his due

⁹ Morris Ginsberg, *On justice in Society*, 64 (1965).

¹⁰ S. Muralidhar, *Law, Poverty and Legal Aid: Access to Criminal Justice V* (LexisNexis Butterworths, New Delhi, 2004)

¹¹ J.S. Bisht, "Right to Legal Aid: A Basic Human Right" *XIII Nyaya Deep* 69 (2012).

¹² Justice J.N. Bhatt, "Ten Commandments for Effective Legal Services", *Nyaya Deep*, Vol. II, (July-September, 1999).

¹³The constitution (one hundred and fifth amendment)Act, 2021 (Gazette published on 19-8-2021)

2.2 MEANING OF LEGAL SERVICE

Literally legal service means help or assistance or free service in the field of law. ¹⁴Legal service 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.”¹⁵

2.3 CONCEPT OF FREE LEGAL AID

The legal approach is used to make certain that no one is deprived of access to expert counsel and aid due to a be deficient in financial resources. Thus, the supplies of legal aid to the poor are grounded in compassionate principles, and their primary goal is to assist those who are impoverished and socially and economically disadvantaged.¹⁶

In addition to the social, economic, and political conditions that support the claim for legal aid, it has recently been acknowledged as a constitutional necessity resulting from Articles 14, 21, 22, (1), and 39-A of the Indian Constitution as well as various statutes and laws that also derive their authority from the constitution.

The goal of the legal aid movement is to make it simple for the underprivileged to access courts and other government offices. The ambition of legal assistance is to make sure that everyone has access to justice ensuring that no one is excluded from it due to economical or other reasons.

The conceptualization of right to legal aid as a basic human right is a great milestone in the annals of the human rights jurisprudence.¹⁷“Live and help Live” is the foundation of legal aid. The Indian Constitution states that the state is responsible for ensuring that the judicial system functions in a manner that advances justice based on equal opportunity. Specifically, the state must ensure that no citizen is denied the opportunity to pursue justice due to a financial or other limitation by providing free legal aid through suitable legislation, programs, or other ways.

3. HISTORICAL BACKGROUND OF LEGAL AID IN INDIA

3.1 VEDIC PERIOD

The oldest of the four Vedas—the Rig, Sama, Yajur, and Atharva—the Rig Veda, does provide what we may call social or legal aid. The 36th and 42nd Slokas under Chapter I¹⁸ discuss the necessity of protecting people from "rakshas" and aggressive individuals, obtaining the power necessary for such defense, and asking God to reward those who provide. As a result, we do discover that violence exists in society or that it will exist in societies to come. The Rig Veda calls for gathering strength, including financial support, or "Daan," to provide aid and support to people who are dealing with or fearing attacks.

According to Sloka 103 of Chapter III, a king who provides aid to somebody in need wins the wealth of his adversaries and always protected by God. Therefore, we can deduce from The Rig Veda makes references to the idea that one's Dharma is to facilitate societal support and King's (i.e., State) assistance to those who are in danger of being assaulted.¹⁹

3.2 THE KAUTILYAN PERIOD

The system of law and order during Kautilya's reign was extremely effective and well-organized. People who were weak and impoverished received protection and assistance. This era is referred to as the "golden age" of Indian legal philosophy. Many negative customs were eliminated, and society remained stable due to the concept of Dharma (obligation and moral ideals). Everyone had to scrupulously abide by the law, which was linked to faith. Based on Kautilya's Arthashastra, King Ashoka prioritized justice in his reign. For this reason, this time frame is frequently referred to as the Kautilyan age.

¹⁴ V. K. Singh, "Legal Service: Meaning, Nature and Scope," *Lawyers ClubIndia*, available at:

<http://www.lawyersclubindia.com/articles/Legal-service-Meaning-Nature-and-Scope-139.asp> (last visited on June 10, 2025).

¹⁵The Legal Services Authorities Act, 1987.s. 2(c).

¹⁶C.H. Scott, *Legal Aid Past and Present: A Brief Picture* 4-5 (1951), cited in Mamta Rao, *Public Interest Litigation* 341 (Eastern Book Company, Lucknow, 2nd edn., 2010).

¹⁷ Mauro Cappelletti and Bryant Garth, "Access to Justice—The Worldwide Movement to Make Rights Effective: A General Report" in Mauro Cappelletti and Bryant Garth (eds.), *Access to Justice: A World Survey*, Vol. I, 52 (Sijthoff & Noordhoff, Alphen aan den Rijn, 1978).

¹⁸ Govind Singh, *Hindi Translation of Important Parts of Rig Veda* 31-36 (Sadna Pocket Books, New Delhi, 1992).

¹⁹ Vivekananda, Swami. .Caste Culture and Socialism ,Advaita Ashram, Calcutta 1988,p. 88, underscoring the quality of our rich writes- "It is culture that withstands shocks, not a simple mass of knowledge..... we all know, in modern times, of nations which have masses of knowledge, but what of them? They are like tigers, they are like savages, because culture is not there".

Buddhism was supplanted by Vedic influences as the predominant religion during the Kautilya period. However, the changes made during the Buddhist period remained. Dharma and communal peace were among the social principles that surfaced. Slavery was more widely abolished in society during the later Kautilyan period, which is often referred to as King Ashoka's time. A greater sense of community and a more secular appearance resulted from the satisfaction of various facets of Indian culture. In the history of Indian law, this period is regarded as a golden age²⁰.

3.3 VIKRAMADITYA PERIOD

The highest court's judge received 5,000 silver coins as compensation during the Vikramaditya dynasty, along with a free furnished residence. The current law of pleadings was modeled from an evolved one. The legal landscape of this nation was adorned by jurists such as Manu, Yagnyavalk, Jaimini, Brihaspati, and Narad during its heyday, yet the average citizen had no right to spend even a small amount of money to pursue justice. The last common man received justice through the village and community panchayats.²¹

3.4 GUPTA PERIOD

During the brilliant Gupta Period, the Administration of Justice system that had been established during King Ashoka's reign was maintained and applied. During the Gupta Period, no additional jurisprudential developments occurred.

3.5 MUSLIM PERIOD

In order to administer justice in India, the Mughal monarchs created their own laws. During the Mughal era, two Muslim Indian rules, "Faig-e-Firozshahi" and "Fatawa-e-Alamgiri," outlined the responsibilities of attorneys. Attorneys played a significant role in the administration of justice. State attorneys called as "Wakil-e-Sarkar" or "Wakil-e-Sharai" were appointed and served under Shahjahan and Aurangzeb. Free counsel and assistance were provided to the poor.²²

The Muslim era saw the adoption of legal procedures by the king and the court, on top of the emergence of both legal counsel and support since the founding of courts. During British administration, the Mughal legal system expanded and became more intricate. This gave the poorest and most vulnerable members of Indian society legal support.

3.6 BRITISH PERIOD

In the past, justice was administered in India at a very minimal rate without the need for a court fee or stamp tax. Prior to the British Empire, India was a "Constitutional Monarchy," and under Hindu and Muslim monarchs, the impoverished received justice quickly and cheaply using rudimentary methods. To put it briefly, India has traditionally held the belief that all citizens deserve justice. Due to the costly justice system the British brought with them, legal aid for the impoverished has become imperative.²³

The process was formalized as a result of nearly two centuries of British control, especially the English adjudicatory process paradigm. The legal system began to incorporate technicalities. Due to the attorneys and court costs, litigation quickly became expensive. It also took a lot of time. As a result, the impoverished guy had trouble accessing the courts, and the wealthy judicial system was used by a man to torment his poor opponent.²⁴

3.7 PRE- INDEPENDENCE PERIOD

In 1924, the Bombay Legal Aid Society (BLAS) was founded to offer legal assistance in the years preceding independence. The main objectives of the society were to reduce the cost of litigation, improve access to justice for the

²⁰ A.Egerton, *Historical Aspects of Legal Aid*, 37, 61 LQR (1945) .

²¹ Vivekananda Swami, *Caste Culture and Socialism* (Advaita Ashram, Calcutta, 1988) 88, underscoring the quality of our rich culture writes: "It is culture that withstands shocks, not a simple mass of knowledge We all know, in modern times, of nations which have masses of knowledge, but what of them? They are like tigers; they are like savages, because culture is not there."

²² Government of India, *Report of the Expert Committee on Legal Aid: Processual Justice to the People* 43 (Dept. of Law and Justice, Delhi, 1973).

²³ Srinivasa Kotagiri Rao, "The Emergence of the concept of Legal Aid in India and its application in contemporary Goa – A Legal Study" 80 (Ph.D. Thesis, Goa University, 1992).

²⁴ Law Commission of India, *14th Report on Reforms in the Administration of Justice* 621 (1958).

poor, assign attorneys to the poor based on need, offer free legal aid, and cover court fees. For a person to qualify for legal aid, they must have a valid case and satisfy the means test.²⁵

Even before the Constitution went into effect, the issue of legal help for the poor caught the public's attention. In England, a committee headed by Lord Rushcliffe was established in 1944 to look into the resources already available for legal counsel in England and Wales and assistance to the impoverished. The committee's recommendations were to ensure that those in need of legal advice could access these facilities and to modify and improve existing ones, whether in civil or criminal courts, as far as it seemed practical.²⁶

3.8 POST-INDEPENDENCE PERIOD

India had many socioeconomic issues when it became independent. Therefore, social justice and economic growth were important political objectives at the time. As a result, legal aid was just as important at the time, if not more so, because, in accordance with constitutional objectives, it directly correlates with the advancement of the nation and society. At the request of the Bombay Legal assistance Society, which called for government attention, the seed of legal assistance had already begun to grow in order to achieve that objective, aim, and aspiration.

The state governments' comments were depressing since they used financial limits and challenges as justifications. This demonstrated that the government at the time did not take the subject of providing legal aid to the poor seriously.²⁷

The V.R. Krishna Iyer Committee's nomination by the Indian government on October 27, 1972, was another significant step. The committee's report, "Processual Justice to the People," highlighted legal assistance as an essential part of the legal system and suggested major changes to legislation, judicial processes, and the legal profession.²⁸ The report promoted the creation of a comprehensive Legal Aid and Advice Act as well as the extension of legal aid in both civil and criminal cases, with certain exceptions. Legal aid was further developed in 1973 with the passage of the Criminal Procedure Code.²⁹

4. JUSTICE BHAGWATI COMMITTEE³⁰ AND ROLE IN DEVELOPING LEGAL AID SCHEMES

A committee headed by Justice N.H. Bhagwati was constituted by the Bombay government on March 23, 1949. The Committee's report, which was turned in on October 31, 1949, included the following suggestions:

- a.) There should be four levels to the administrative framework of legal aid:
 - i. High Court level
 - ii. District level and
 - iii. Taluk level b.
- b.) Two criteria were proposed by the Committee to determine eligibility for legal aid, notably
 - i. Means test and
 - ii. Prima facie test
- c. It was also suggested that no assistance be given in circumstances that are small or unimportant.
- d. On oath, a statement on "disposable income" and "disposable capital" shall be made.
- e. There should be a certificate from a respectable citizen or responsible officers regarding his means.

²⁵S.N. Johari, "Programme and Movement of Legal Aid to Poor" 1981 AIR Jour. 26, available at shodhganga.inflibnet.ac.in (last visited on Apr. 2, 2025).

²⁶B.N. Mani Tripathi, *Jurisprudence: Legal Theory* 402 (Allahabad Law Agency, Allahabad, 14th edn., 2003).

²⁷Kishore Chand vs. State of H. P AIR 1990 Cri.LJ 2289(SC).

²⁸Government of India, *Report of the Expert Committee on Legal Aid: Processual Justice to the People* (V.R. Krishna Iyer Committee) 43 (Ministry of Law, Justice & Company Affairs, 1973)

²⁹The Code of Criminal Procedure, 1973 (Act 2 of 1974).

³⁰Srinivasa Kotagiri Rao, "The Emergence of the concept of Legal Aid in India and its application in contemporary Goa – A Legal Study" Chapter V, 8 (Ph.D. Thesis, Goa University, 1992).

Legal aid was included in the 20-point program that Prime Minister Mrs. Indira Gandhi introduced during the 1975 emergency. The idea was quickly accepted by Justice Bhagwati. Following Mrs. Gandhi's return to power in 1980, a committee headed by Justice Bhagwati was established to carry out Legal Aid Schemes. The programs that Justice Bhagwati established included many different aspects in addition to the conventional court-oriented legal aid programs.³¹

5. KRISHNA IYER COMMITTEE REPORT 1973

Another committee that looked at the connection between poverty and the law was formed on October 22, 1972, and was chaired by Justice Krishna Iyer. Justice Iyer made a compelling case for the idea of public interest litigation in his lengthy 275-page report, which was turned in on May 27, 1973. Instead of expecting people to handle complicated legal procedures on their own, he underlined the significance of creating an active and comprehensive lawful support system that takes the law to the people.³²

6. ALL INDIA LAW CONFERENCE³³

Third All India Law Conference in 1962, the Committee on Legal Aid took up the issue of legal aid once more. It acknowledged that state had a duty to give legal aid and that both the federal government and the states should contribute money to this endeavor. The Committee recommended that the Bar Association of India and the local bar associations implement a number of measures to provide legal help; in the meanwhile, the state may implement a comprehensive legal aid program. However, no significant action was taken to put these recommendations into practice, and no Bar Association took any action.

7. The 42nd AMENDMENT TO THE CONSTITUTION, 1976

The 42nd Amendment Act, 1976, inserted Article 39-A to the Indian Constitution to further secure equal justice, which the Preamble promised all citizens, and equality before the law, which would mean nothing to the impoverished as long as they cannot pay to be admitted lawfully.³⁴

The Constitution's Article 39-A grants the underprivileged access to free legal assistance. Supreme Court has described the purpose of Article 39-A as Article 39-A makes it abundantly evident that the Constitution's goal is to guarantee social and equitable justice, which means that comprehensive programs must be used to provide legal help.³⁵

Article 21 and Article 39-A demand the right to free legal aid and a timely trial. It also implies that, like other faculties that are eligible for grants, the State would have to provide grant-in-aid to accredited private law schools. It cannot be rejected on the grounds of lack of cash or for any other reason.³⁶

CONCLUSION

India's legal aid system has evolved steadily since the Vedic period. Current legal aid efforts have resulted in a system that protects the rights of those who are unjustly treated by the justice system, including the poor and illiterate. Legal aid became easier to obtain after a slew of new laws dealing with free legal services were passed. Consequently, this chapter aids in understanding the previous legal assistance systems, forecasting the present, and aiding in the creation of a system that allows everyone to obtain justice regardless of their financial situation.

³¹Sujan Singh, *Legal Aid Human Right to Equality*, 91 (Deep & Deep Publications).

³²Committee on Legal Aid titled as "professionals justice to poor" set up in the year 1972.

³³*Ibid*

³⁴Nawab Khan vs. State of Gujarat, AIR 1974 SC 1471.

³⁵State of M.P. vs. HiraLalGopi 1988 Cr. LJ 457 .

³⁶S.N. Dhyani, *Law, Morality and Justice: Indian Developments* 125 (Metropolitan Book Co. Ltd., New Delhi, 1st edn., 1984).