

**Free Legal Aid And Legal Service Authorities - An Overview****Mrs. Amrita Chakraborty****Assistant Professor in Law****Kolkata Police Law Institute****University of Calcutta****(Received-15-January2026/Revised-30-January2026/Accepted-10February2026/Published-25 February2026)****Abstract**

Legal Aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial. Legal aid is essential to guarantee equal access to justice for all. This paper has analyzed the development of legal aid movement in regard to right to legal aid. By the constitutional 42nd Amendment Act of 1976, a new provision was incorporated in the Constitution under Article 39A, for providing free Legal Aid and concept of equal justice found a place in our constitution Article 39A which was incorporated under part IV-Directive Principles of State Policy. By the virtue of judicial interpretation right to free legal aid is the subject matter of Fundamental Right through Article 21 of the Constitution of the India. . The paper analysed international status, entitlement of free legal aid, judicial attitude of free legal aid. The article concludes with certain recommendations for the development of the concept of free legal aid.

**Keywords: Right to Legal Aid, Fundamental Right, Constitution, Legal Services Authority Act, NALSA.**

**Introduction**

India is a modern state that has accepted the concept of 'welfare state'. Hence it has to work for the welfare of the general public. It is the function of the State to establish a just social order by enacting just laws and by providing equal opportunity to all to grow. The primary objective of any legal system is to maintain peace and harmony in the country and to deliver justice. Justice means 'fair, reasonable or just'. Every Government is constituted to respond to the needs and aspirations of the people and to remove social inequalities among its citizens. This promotes

social justice among poor and the downtrodden. The concept of social justice must be the underlying principle in the administration of justice in the country.

Today with the plethora of legislative enactments, statutory rules and regulations, and judicial precedents, Courts are a maze not only to the poor but also to a large number of persons who may not be poor financially but so intellectually on account of the lack of knowledge of the relevant laws and of the procedure for obtaining benefit thereof. They have got out of the maze by engaging lawyers and paying their fees. This route of getting out of the maze was not available to the have-nots, who may be described as poor or indigent.

Resultantly, to make available the law channels of justice to the poor, free legal services have been incorporated in the legal system. The concept of legal aid to the indigent has its roots in the well-settled principle of natural justice: 'audi alteram partem'. The earliest movement in Legal Aid was in the year 1851 when an enactment was introduced in France for providing legal assistance to the indigent.

### **Concept Of Legal Aid And Free Legal Aid**

**Legal aid** is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial.

**"Pro bono"** is the term for free legal help for someone who cannot afford to pay for legal assistance and is not entitled to legal aid. It comes from the Latin **"pro bono publico"** which means **"for the public good"**.

Individuals may be able to obtain legal aid to help with any legal costs. Whether anyone can or cannot depends on many things including his financial circumstances such as how much he earns and what savings he has, and the type of legal help he is looking for. Therefore, **Free Legal Aid** means free or expensive legal advice, assistance or representation provided to those who, because to their financial condition, otherwise would not be able to get.

### **Legal Aid Movement In India - Its Development**

The concept of equal justice was not unknown in ancient India. Manusmriti casts a duty on king to administer justice ignoring his whims Emphasizing on the religion, Manu states that it includes administration of justice in social, economic and political aspects, whose sanctity has to be preserved and developed. In the medieval period, though the king was required to administer Islamic law in deciding all cases irrespective of religion of the parties to the suit. Yet Hindus

were administered by Hindu Law in deciding civil and religious of which the parties were Hindus. It was Jahangir who took the credit for dispensing even-handed justice to all irrespective of birth, rank of the official position. He used to say that God forbid to favour nobles or even princes in that matter of dispensation of justice. Because of his fair hearing, the justice was known as "JahangiriNyaya".

In the modern period, the earliest Legal Aid movement appears to be of the year 1851 when some enactment was introduced in France for providing legal assistance to the indigent. In Britain, the history of the organised efforts on the part of the State to provide legal services to the poor and needy dates back to 1944, when Lord Chancellor, Viscount Simon appointed Rushcliffe Committee to enquire about the facilities existing in England and Wales for giving legal advice to the poor and to make recommendations as appear to be desirable for ensuring that persons in need of legal advice are provided the same by the State. The Committee also recommended four-tier machinery i.e. (i) at Taluka (tehsil) level, (ii) at district level, (iii) at greater Bombay level and (iv) at State level. For giving legal aid although the same could not be implemented due to certain reasons. In the same year, another Committee on "Legal Aid and Legal Advice" was appointed under the Chairmanship of Justice Arthur Trevor Harries, the then Chief Justice of Calcutta High Court. This Committee recommended giving legal assistance to the poor.

Since the fifties the Govt. of India also started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In the sixties, some guidelines were drawn by the Govt. for legal aid schemes. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. Since 1952, the Govt. of India also started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. Before 1976 there was no concept of free legal aid in India. Bombay Legal Aid Society was the first one to propose the idea of free legal aid to poor litigants. It was first time in the year 1949 under the chairmanship of Justice P.N. Bhagawati a committee was set up and was called "The Committee on Legal Aid and Legal Advice in Bombay". Later on following Justice Bhagawati, Sir Arthur Trevol Harris being the Chief Justice of Calcutta High Court also established a committee to look into the matter. Also in the Law Commission report of 1958 it was held that "rendering of legal aid to poor litigants is not a minor problem of procedural law but a question of fundamental character" which clearly shows the importance to address the issue if providing free legal aid and advice to all the needy ones in the country. In

1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Hon. Mr. Justice P.N. Bhagwati then a Judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country. But significant change came in the late seventies. After Maneka Gandhi case courts in India widened their perspective with respect to the civil liberties.

### **Constitutional Commitment To Free Legal Aid**

Article **14** guarantees equality before law and equal protection of laws. Equality before law necessarily involves the concept that all the parties to a legal proceeding must have an equal opportunity of access to the court and of presenting their cases to the court. For the indigent, who are unable to meet their economic needs, the justice access to the court would remain a myth because their inability to pay court fee and lawyer's fees etc. would also deny him access to the court. Therefore, under Article 14, rendering legal services to the poor litigant is not just a problem of procedural law but a question of a fundamental character.

Article **21** asserts the right to life and personal liberty. This right cannot be taken away except by procedure established by law. A procedure is fair and just only when it follows the principles of natural justice. Right to hearing is an integral part of natural justice. If the right to counsel is essential to fair trial then it is equally important to see that the accused has sufficient means to defend them.

Article **22(1)** provides that a person arrested should not be detained in custody without being informed of the grounds for such arrest and should not be denied the right to consult and be defended by a legal practitioner of his choice.

Article **38** urges that the State should strive to promote the welfare of the people by securing and protecting as effectively as it may be a social order in which justice: social, economic and political shall inform all the institutions of national life.

Article **39A** of the Constitution, inserted by 42nd Amendment of the Constitution in 1976, provides for equal justice and free legal aid. It commands the state to secure that the operation of 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 the opportunities for securing justice are not denied to any citizen by reason economic or other disabilities. The Constitution provides for the post of an Attorney General of India to offer legal

advice to the Union Government. He is appointed and can be dismissed by the President alone. Likewise provisions are made in the Constitution for the appointment of the Advocate General of a State. He is entitled to attend all legislative sessions and take part in discussions on matters in which expert legal knowledge is required. His duty includes advising Government on legal matters pertaining to his state. These provisions do accord the due status to the legal aid and ample scope for developing legal aid jurisprudence through which human rights culture can be created and social justice can be assured as envisioned by founding fathers of the Constitution.

### **Legislative Methods Of Providing Free Legal Aid**

Government has shown its concern over the existing position of justice delivery system. It has acknowledged the fact the poor and underprivileged sections of society have suffered the worst under the present system. There is a need for free legal aid to poor has been realized. Therefore it has incorporated legislative actions such as the **Legal Services Authorities Act, 1987** and set up bodies such as NALSA and SCLSC to ensure free legal aid to poor and under privileged.

#### ***The Legal Services Authorities Act, 1987***

By the constitutional 42nd Amendment Act of 1976, a new provision was incorporated in the Constitution under Article 39A, for providing free Legal Aid and concept of equal justice found a place in our constitution Article 39A which was incorporated under part IV-Directive Principles of State Policy reads as under:-

*"Equal justice and free legal aid-*The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

The advent of Legal Services Authorities Act, 1987 gave a statutory status to **LokAdalats**, pursuant to the constitutional mandate in Article 39-A of the Constitution of India. It contains various provisions for settlement of disputes through LokAdalat. It is an Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize LokAdalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

With the object of providing free legal aid, the Government of India had, by a resolution dated 26th September, 1980 appointed a Committee known as "Committee for Implementing Legal

Aid Schemes" (CILAS) under the chairmanship of Mr. Justice P.N. Bhagwati (as he then was) to monitor and implement legal aid programmes on an uniform basis in all the States and Union Territories. CILAS evolved a model scheme for legal aid programmes applicable throughout the country by which several legal aid and advice Boards were set up in the States and Union Territories.

### **NALSA**

National Legal Services Authority (NALSA) has been set up under section 3 of the Act to monitor and oversee the legal aid programmes throughout the country. In every State, a State Legal Services Authority has to be set up under section 6 of this Act for implementation of the legal aid programmes. At District and Taluk levels also, Legal Services Authorities/Committees are being established to ensure that Legal services are easily available even to the poorest amongst the poor throughout the country. The Supreme Court Legal Services Committee has been constituted under the Act for giving legal aid in the matters coming before the Supreme Court. In every High Court, Legal Services Committees are being established to provide free legal aid.

### ***Supreme Court Legal Services Committee***

To empower the marginalized sections of society by promoting legal awareness with the ultimate objective of establishing a just and equitable social order, the Supreme Court of India has set up Supreme Court Legal Services Committee (SCLSC). The SCLSC is headed by a Judge of the Supreme Court of India and has distinguished members nominated by the Chief Justice of India.

### ***Other Provisions Relating to Legal Aid***

**i) BharatiyaNagarikSurakshaSanhita,2023** -Section 340 provides that where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State; and the section further empowers the State Government to extend the application of the above provision in relation to any class or trials before other courts in the State.

**ii) Civil Procedure Code,1908**-Order 33 provides for filing of suits by indigent persons. It enables persons who are too poor to pay court-fees and allows them to institute suits without payment of requisite court fees.

### **Who is Entitled to Free Legal Aid?**

*Any person, who is:*

- A member of the scheduled castes or tribes;
- Poor (with an annual income of not more than Rs.50000/- for cases in the Supreme Court and Rs.25000/- in other courts);
- A victim of trafficking in human beings or beggar as referred to in Art. 23 of the Constitution;
- Disabled, including mentally disabled;
- A woman or child;
- A victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earth quake, industrial disaster and other cases of undeserved want;
- An industrial workman;
- In custody, including protective custody;
- Facing a charge which might result in imprisonment;
- Unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence etc;

*In addition to the above, legal service may be granted:*

- In cases of great public importance;
- Special cases considered deserving of legal services.

**Judicial Attitude On Free Legal Aid**

Humanism, which is the source and strength of legality, is writ large in the theme of legal services to the poor in that part of our planet where backwardness and indigence have struck the hardest blows through the legal process itself on the lowly and the lost.

In **Janardhan Reddy v. State of Hyderabad[1951] SC 217** and **Tara Singh v State of Punjab[1951] SC 411**, the court, while taking a very restrictive interpretation of statutory provisions giving a person the right to lawyer, opined that this was, “a privilege given to accused and it is his duty to ask for a lawyer if he wants to engage one or get his relations to engage one for him. The only duty cast on the Magistrate is to afford him the necessary opportunity (to do so).” Even in capital punishment cases the early Supreme Court seemed relentless when it declared that “it cannot be laid down in every capital case where the accused is unrepresented the trial is vitiated.” Thus it can be pointed out that newly Independent India was not clear about the

broad perspective of its legal aid programme. Although legal aid was recognized by the Courts as a fundamental right under Article 21 reversing their earlier stance, the scope and ambit of the right was not clear till this time. The step was taken in **Sunil Batra v. Delhi Administration[1978]** SCC 494, where the two situations in which a prisoner would be entitled for legal aid were given. First to seek justice from the prison authorities and second, to challenge the decision of such authorities in the court. Thus, the requirement of legal aid was brought about in not only judicial proceedings but also proceedings before the prison authorities which were administrative in nature. Justice Krishna Iyer. In **Maneka Gandhi v. Union of India[1978]** SC 597, courts in India widened their perspective with respect to the civil liberties. While disclosing shocking state of affairs and callousness of our legal and judicial system causing enormous misery and sufferings to the poor and illiterate citizens resulting into totally unjustified deprivation of personal liberty.

In **M.H. Hoskot v. State of Maharashtra[1978]** SC 1548, declared: If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to appeal (to the Supreme Court) for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual ‘for doing complete justice’.

The court has reiterated again in **HussainaraKhatun v. State of Bihar[1980]** 1 SCC 98 and said: “it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court’s process that he should have legal services available to him. Free legal service to the poor and the needy is an essential element of any reasonable, fair and just procedure.” In 1986, in another case of **Sukhdas v. Union Territory of Arunachal Pradesh[1986]** SC 991, Justice P.N. Bhagwati referring to the decision of HossainaraKhatun’s case and some other cases.

### **Recommendation**

The growing litigation, delay in disposal, pendency in ordinary law courts are the reasons for the growth and popularity of this ancient but innovative alternative dispute resolution machinery. The Supreme Court of India, while giving effect to Article 39-A, has held in several cases that right to speedy justice and free legal aid is part of Article 21.

The new responsibilities of the Bench and the Bar must be assessed in the context of mass discontent and the dynamic rule of law as its answer. The Judiciary is a revered institution.

Our judicial trust with social destiny can only be redeemed by a spread out and institutionalized legal services project adjusted to the conditions of our society.

**The following points could be taken into consideration for development of this concept in its essence:**

1. Review of the working of Legal Aid System.
2. Review of the Alternative dispute Resolution System in the country.
3. Up gradation of Judicial Infrastructure, including computerization, and
4. Up gradation of Judicial Manpower.

### **Conclusion**

The focus of Legal Aid is on distributive justice, effective implementation of welfare benefits and elimination of social and structural discrimination against the poor. It works in accordance with the Legal Services Authorities Act, 1987 which act as the guideline of the rendering of free justice. The criticism that legal aid litigation, aims at law reform thereby making the judiciary usurps the functions of the legislature is illogical and does not carry conviction in common law jurisprudence. *“Whatever standards a man chooses to set for himself, be they religious, moral, social or purely rational in origin, it is the law which prescribes and governs his rights and duties towards the other members of the community. This somewhat arbitrary collection of principles he has very largely to take as he finds and in a modern society it tends to be so diverse and complex that the help of an expert is often essential not merely to enforce or defend legal rights but to recognize, identify and define them.”* -**Mathews and Outton.**

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