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FULFILLING THE CONSTITUTIONAL PROMISE: OVERCOMING THE BARRIERS TO LEGAL AID IN INDIA

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ABSTRACT

The soul of every democracy is justice, which in this case manifests itself as the very embodiment of equality and fairness. Yet in India, for many marginalized citizens, it is only a dream that is left unfulfilled. Although constitutionally promised under Article 39A and the Legal Services Authorities Act, 1987, in practice, the same falls drastically short. Prominent cases like “Hussainara Khatoon v. State of Bihar” cemented legal aid as a basic right, yet only a few percent of those who qualify can be accorded that service, often in late delivery or inadequate measures. These gaps speak to broader institutional inefficiencies, poorly financed structures of legal aid, and community skepticism about a system seen as not working. It is an innovation-based and community-led solutions. Technology, such as e-courts and online mechanisms of dispute resolution, is also presented through which access to justice can be democratized and the limitations that occur in rural regions because of the digital divide can be mitigated. Grassroots-based legal literacy programs have also been suggested as tools for allowing rights access by marginalized communities through programs implemented and delivered along the lines of cultural and linguistic contexts. This means equal justice is not achieved merely through funding but requires sweeping reforms, systemic efficiency, and collective responsibility. It presents an image of a system of justice that bridges the gap between constitutional ideals and the lived realities where fairness is not a privilege but a universal right.

INTRODUCTION

Justice is the bedrock of every democratic society, and it is celebrated as an ideal, which is universal, a beacon of equality, fairness, and harmony. For many, however, in India, this principle remains more of an unattainable illusion. It is a question worth pondering: Is justice really blind, or does it weigh the scale based on one's monetary worth? Access to justice does not come easily to many Indians, it

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has become a privilege reserved for those who know the way to navigate through the expensive, labyrinthine, and often inaccessible judicial system. The cost of representation in court still remains an onerous obstacle that it almost certainly insures that only the heaviest of purses shall make an equal claim to justice. Such systemic inequality is just what legal aid seeks to overcome. Its promise remains largely unfulfilled by institutional apathy and structural inefficiencies thwarting its potential.

BARRIERS TO ACCESS: OBSTACLES TO JUSTICE

These are multi-dimensional barriers to justice, compounded with each other, thus adding yet another layer of difficulty to gain legal remedy. The socio-economic disadvantage of this scenario places the lowest strata of society and the disadvantaged community of Indians in a situation where accessing this legal expertise is almost impossible for these communities due to financial constraints. This deprivation makes them further vulnerable to exploitation, and their grievances usually fall on deaf ears in the face of an ever-growing backlog in the courts, it is even worse in rural India. The massive numbers of people reside in villages who do not have access to legal aid clinics or even elementary legal education available to them, this geographical inaccessibility ensures that justice remains a remote dream for most. There are cultural barriers which also include linguistic diversity, illiteracy, and caste-based discrimination, and the language barrier is particularly daunting. For many tribal communities, it is the inability to communicate in the official languages of the courts — Hindi or English — that excludes them from the system outright.

Besides all these, lack of literacy, inappropriate legal literacy programs, and thus leaving them without information about rights and available avenues, is not access but trust; it is about confidence, because marginalized people are less likely to believe in an unresponsive system. Justice does not just represent a great idea for groups who have been let down repeatedly. It is closely seen that these are thoroughly linked obstructions and not in standalone. So, when India remains keen at battling imbalances with the socialistic aspects, few geographical and culture-related obstructions somehow give work to keep this vicious circle working towards only one cause- inequality. These intersectional barriers must be understood and addressed if justice is to become real for all.

ARTICLE 39A

Article 39A of the Indian Constitution is a solemn promise: “no citizen shall be denied access to justice on the grounds of financial incapacity”². This is also supported under the **Legal Services Authorities Act, 1987**. This again mandates the providing free legal aid to the economically poor. An important provision this cannot at all be diluted-the whole foundation, of the Indian Constitution goes on the fundamental principles of social justice and equality. That, however, remains a very big gap between the promise and its deliverance.

This proposition has been reiterated by the Supreme Court in landmark cases like “*Hussainara Khatoon v. State of Bihar (1979)*”³, where it held that free legal aid is a constituent part of the Right to Life and Liberty under Article 21 of the Constitution, such judgments notwithstanding, free legal aid remains a distant dream for many.

It seems constitutional promises are unfulfilled because lack of understanding of legal rights and administrative inadequacies besides infrastructural issues. Only a few percent of eligible people, in fact, get any legal aid, and even so, it comes in terms of delayed or inadequate services when delivered at all.⁴

This gap is most vivid if one thinks about the role of legal aid in attaining justice for the deprived. In the present state of affairs, legal aid is seen as an appendage to the system rather than being part and parcel of the system. The building of the legal aid infrastructure requires much more than mere funding; it requires better accessibility, greater efficiency, and public awareness.

LEGAL AID AND ASSISTANCE: THE FOUNDATION FOR EQUAL JUSTICE

Legal aid is far from a service; it is the bedrock of equitable justice. For millions otherwise excluded from the legal system, legal aid will be the lone route to access justice. It forms the lifeline in empowering people to challenge systemic injustice and fight for their rights. But this lifeline is under unbelievable pressure. Legal aid attorneys often work in settings with limited resources and high stakes, facing crushing caseloads. A 2021 survey found that many legal aid lawyers work more than 80 hours a week, carrying a caseload vastly heavier than that borne by their counterparts in private practice.⁵

² INDIA CONST. art. 39A

³ Hussainara Khatoon And Others (I) v. Home Secretary, State of Bihar, 1979 AIR 1360.

⁴ Live Law News Network, <https://www.livelaw.in/top-stories/free-legal-aid-doesnt-mean-poor-legal-aid-must-mean-quality-service-justice-uu-lalit-195096> (last visited Dec. 15, 2024).

⁵ Bloomberg Law, *2021 Attorney Workload and Hours Survey Analysis*, 3, (2021), <https://assets.bbhub.io/bna/sites/7/2021/05/Lawyer-Satisfaction.pdf>.

The percentage of lawyers willing to work as full-time legal aid lawyers is less than 1% of the lawyer population, additional factors like pay, having the resources to provide legal aid to the people can affect this and has led to scarcity of lawyers who wish to provide legal aid, uneven legal aid funding across cities, and states is also a part of the problem, and the profession still struggles to attract lawyers to rural parts of the country where there is a severe shortages of lawyers.⁶

In “*Centre for Legal Research and Another v. State of Kerala, 1986*”⁷, Chief Justice P.N. Bhagwati said that the strength of the legal aid program lies in the people who support it: the lawyers, the judges, and the citizens who demand justice. Not only is service rendered, but legal aid attorneys also represent a system designed to bring fairness and justice before all parties involved. Yet, their task is fundamental in meeting those built-in inequities of the system; without systematic change and increased support, however, they continue to be burdened and underappreciated. The Supreme Court has recently passed a judgement in “*Suhas Chakma v Union of India & Ors.*”⁸ where it stated that there is a need for a nationwide legal service program to ensure that the benefits of legal aid reach the underprivileged and marginalized populations.

TECHNOLOGY AND JUSTICE: THE DOUBLE-EDGED SWORD

This brings in very wide openings for the transforming role of technology in justice delivery, especially on matters pertaining to legal aid. Mechanisms of e-courts and online dispute resolution can make it easier, faster, and cheaper for anyone concerned to seek redress for disputes. It may also make all court records digital, which would make the procedures streamlined and reduce this vast queue of cases that has made judicial recourse slow. Yet, India still has big digital divides. Since the online legal resources are within an easy reach of the urban dwellers, it excludes the rural population from such feats because of fewer internet connections, little digital literacy, and infrastructural constraints.

Even in the most distant places, people may not have access to basic digital tools such as smartphones. For those who need these technologies the most, ignorance of the existence and mechanisms of e-courts and ODR makes it irrelevant.

⁶ ABAJOURNAL, <https://www.abajournal.com/web/article/2023-profile-of-the-legal-profession-spotlights-the-scarcity-of-legal-aid-lawyers> (last visited Dec. 15, 2024)

⁷ Centre For Legal Research and Another v. State of Kerala, 1986 AIR SC 2195.

⁸ Suhas Chakma v Union of India & Ors, 2024 SCC ONLINE SC 3031.

Tapping technology, coupled with synergetic policies as the force for change, can open further opportunities toward access to justice. This would connect digital tools and grass roots legal aid programs without leaving anybody behind; therefore, an example can be taken as e-Lok Adalats, a good hybrid, where use has proven successful in rendering cheap solutions for cases and have shown great results in solving in efficient and effective manners.⁹ This leaves it to the government to fulfil these initiatives by investing in the development of digital infrastructure and ensuring that everyone has access to digital literacy.

COMMUNITY-BASED APPROACHES: DOING JUSTICE FROM THE GRASSROOTS

The community-based approach has been quite promising in terms of bringing justice to the marginalized groups. Grassroots organizations are always using culturally responsive strategies in the attempt to connect formal legal systems with communities. For example, legal literacy programs are conducted in the local language. Therefore, people are empowered to understand their rights and how they may obtain legal assistance. The program has covered the tribal areas with culturally sensitive approaches in building trust and ensuring that resources accessed are both accessible and effective in such areas.

Thus, volunteers and local advocacy groups will be essential in developing the knowledge base on legal aid programs to encourage the public at large to seek justice. Community-based approaches will remove the boundaries between the formal justice system and communities the system needs to reach out to. Collaboration with the leaders of these localities and society will enable such organizations to win their trust and, thereby empower people to act to their rights.

The road to an equal and inclusive justice system is long and fraught with many obstacles in the journey. But it is not impossible. It is only in the past couple of years that momentum gathered for rectifying systemic faults in India's legal aid structures. Law schools' increasingly focus on pro bono work so that the next generation of lawyers learns something about their social responsibility. The government, too, has come out with its intentions of making the system stronger. To this end, in the last four years, the government has allocated Rs. 930 crores for National Legal Services

⁹ Press release, Ministry of Law and Justice, The Lok Adalat is one of the important Alternative Disputes Resolution (ADR) Mechanism available to common people, (Dec. 22, 2022) <https://pib.gov.in/PressReleasePage.aspx?PRID=1884151>

Authority (NALSA).¹⁰ Much more needs to be done. The system requires not just funding, but comprehensive reforms directed at the structural inefficiencies and systemic inequalities that prevent legal aid from reaching those who need it most. Legal aid is not only a constitutional mandate but the moral necessity resting at the heart of any just and equitable society. It was observed by Chief Justice P.N. Bhagwati that ***"Legal aid is not charity; it is a duty and obligation"***. The responsibility to deliver justice to all does not lie alone with the judiciary. It is a collective effort for policymakers, lawyers, and citizens alike to ensure a system in which justice becomes not a utopian dream but a reality for everyone. This is the promise of our Constitution—a promise that though long unfulfilled, still holds within it the promise of bringing about changes to create a more inclusive and just society.

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¹⁰ Press release, Ministry of Law and Justice, State/UT-wise details of Number of Persons benefited through free Legal Services provided by the Legal Services Institutions during the last three financial years i.e. 2021-22, 2022-23, 2023-24 and the current financial year 2024-25, (Jul. 26, 2024) <https://pib.gov.in/PressReleasePage.aspx?PRID=2037349>