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SPECIFIC ELIGIBILITY FOR LEGAL AID FOR SENIOR CITIZENS: A LACUNA

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ABSTRACT

The problem regarding universal access to free legal aid has been quite relevant for years especially in India. The problem, earlier had been widespread and to combat this, a national legislation had to be enforced which guaranteed every citizen an equal opportunity to get justice regardless of their financial status. To maintain the principle of equality before law, a Constitutional mandate was also introduced besides, the newly added Article 39A of the Indian Constitution directed the State to ensure that every citizen who needed free legal aid would receive it in a timely manner regardless of their economic conditions. Subsequently, the Legal Services Authorities Act, 1987 came into existence which established the National legal Services Authority (NALSA) which fulfilled the constitutional mandate of Article 39A. This paper highlights the lack of a clear eligibility criteria for free legal aid for the Senior citizens, the problems perpetuated by the varying state-specific annual income ceiling, the eligibility for accessing free legal aid for senior citizens in India being based on income and the problems it causes, lastly, how efficient the Legal Services Authorities Act, 1987 has been in providing free legal aid to senior citizens. The methodology used in this research paper is mainly doctrinal and comparative.

INTRODUCTION

The research problem, 'Specific Eligibility for Legal aid for Senior Citizens: A Lacuna' mainly highlights the lack of clarity in regards to the specific eligibility. This paper involves a multifaceted discussion from many relevant perspectives highlighting the challenges that senior citizens face in accessing free legal aid.

Section 12 of Legal Services Authorities Act, 1987 which specifically mentions the criteria for receiving free legal aid in India which include many categories of persons however, it does not directly mention

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a criteria for the aged to receive free legal aid rather clause (h) of the pertinent section provides a generalized criteria which also applies to the aged. One might argue that there is a scheme named, 'The NALSA (Legal Services to Senior Citizens) Scheme, 2016'² which does address many challenges that are faced by the Senior citizens and also states many provisions that are in place to protect the interests of Senior Citizens in various contexts however, it rarely mentions the eligibility criteria for Senior citizens, who can reach out the authorities for free legal aid. This causes a lot of confusion among the Senior citizens perpetuating a lack of awareness in regards to free legal aid.

The purpose of this paper is to highlight the Lacuna that exists in regards to the specific eligibility for free legal aid for senior citizens, how the state-specific annual income ceiling varying causes a lot of confusion among the needy and how the eligibility test which is based on mainly income can limit access to free legal aid. This paper highlights the imminent need for a national scheme, or legislation that can clearly declare a more uniform annual-income ceiling eligibility for every state, while variations can be hard to erase completely given the unique socio- economic conditions of every state, the gap between the states can be lessened. Moreover the eligibility which is mainly based on income should also be relaxed, to include not just the categories mentioned under Section 12 of the Legal Services Authorities Act, 1987 but by taking other unique situations into consideration by expanding its scope.

The relevance of this research problem is plenty in legal studies as well as the society. In legal studies, this problem is significant because it directly impacts the Senior citizens in a negative way because they already lack legal awareness in regards to their rights and claim on free legal aid, without more clarity and transparency this problem worsens day by day. In regards to how it is relevant in our society, much can be said. The very purpose of this act is to help marginalized and vulnerable groups of the society and to work to uplift them by extending necessary free legal aid so that they have an equal opportunity to justice regardless of their poor financial condition. This problem negatively affects the financially weak senior citizens and makes them even more vulnerable to abuse and ill treatment by the others.

² National Legal Services Authority (NALSA), 'Legal Aid' (NALSA, Government of India) <https://share.google/UKLtei4UaU0YBokml> accessed 15 October 2025.

A MULTIFACETED DISCUSSION REGARDING THE PROBLEMS FACED BY SENIOR CITIZENS

Section 12³ of the legal services Authority Act, 1987 does not explicitly mention a category of eligibility for Senior Citizens, clause (h) ‘a person in receipt of annual income less than the amount in the following schedule (or any other higher amount as may be prescribed by the State Government), if the case is before a Court other than the Supreme Court, and less than Rs 5 Lakh, if the case is before the Supreme Court.’ ‘People’ is applied to senior citizens as well. Which does not even mention Senior Citizens by word. Later, the act was amended to include ‘The NALSA

(Legal Services to Senior Citizens) Scheme, 2016’ which does not explicitly mention about the eligibility criteria either.

The respective State legislative Authorities of different states do indeed mention the State specific annual income ceiling limit for example Assam has a limit of rupees three lakh per annum and Bihar has a limit of rupees one fifty thousand per annum. However the varying annual income ceiling limit can perpetuate confusion among the Senior Citizens who are not well versed with these legal provisions and already face challenges, these variations can worsen this problem. While it is an undeniable fact that there are differing socio-economic conditions unique to every State, there is a need to bridge the gap in these variations as much as possible because this system can perpetuate disparity on the basis of income and in many cases limit the access to these free legal services.

Moreover, state-specific annual income ceiling varies from one state to another which is subject to changes on the discretion of each State Government whenever necessary, such changes can lead to uncertainty because there is already a dearth of legal awareness among the Senior citizens. Hence any changes to these income ceilings must be notified to the Public especially the Senior citizens. Legal awareness is extremely important to general public especially the Senior citizens who are vulnerable. Awareness of their rights and entitlement to free legal aid can be used by them when they defend their case and defend themselves against abuse through legal mechanisms.

³ National Legal Services Authority (NALSA), ‘Legal Aid’ (NALSA, Government of India) <https://share.google/UKLtei4UaU0YBOKml> accessed 15 October 2025.

ELIGIBILITY ON THE BASIS OF A MEANS BASED TEST AND ITS IMPLICATIONS

The eligibility for accessing free legal aid in India is currently based predominantly on income or a 'means test' should also include determinants or criteria which are not falling within the purview of section 12. There is plenty of research highlighting the various challenges that are faced by the elderly and in such unique circumstances the means based test of eligibility according to section 12 should be relaxed:

1)Urban and Rural Disparities: These circumstances include, urban and rural disparities when it comes to providers being concentrated in urban areas leaving the elderly in rural areas to fend for themselves. Hence the ones who are living in these rural areas are not able to claim their entitlement to legal aid both free as well paid even if they are eligible by Section 12, as way to compensate them free legal aid should be provided to them and their cases should be given the first priority, emergency status and pre-eminence.

2)Financial abuse: Elderly abuse takes place in many forms even with money in their banks, senior citizens are scammed mostly by their own children who seize their parents bank accounts taking advantage of their physical and mental vulnerabilities and do not let them access their own money. Such financial abuses should also be taken into consideration while deciding the eligibility.⁴

3)Emergency health crisis: At times, the senior citizens have to support their families even after retirement. They navigate through rising health care costs and access to specialized healthcare for themselves or for a sick family member, in most cases they have to take care of their spouses⁵. And even if they are financially stable, most of the income goes into medical treatments. Such cases are not rare but are less considered by these legal provisions. Hence these people should also be entitled to receive legal aid for free and the eligibility criteria should be also include these people.

4)Vicious Cycle of Debt: Many Senior Citizens are afflicted with Debts mainly student loans that they are still paying in their old age, other family expenses like home purchases, college tuition, credit card debts for accessing health care which is getting expensive mainly due to fixed income. In such situations, senior citizens should receive free legal aid because the costs of legal proceedings, lawyer's

⁴ Financial Concerns Seniors Face and How to Prevent Them (2025) <https://share.google/uJClBy4YBPZ2P1cCe> accessed 15 October 2025.

⁵ Financial Concerns Seniors Face and How to Prevent Them (2025) <https://share.google/uJClBy4YBPZ2P1cCe> accessed 15 October 2025.

apparently fees and consultancy fees are rising as well and these judicial procedures require years to end consisting of multiple hearings and court appearances which can run them dry.

5)Frequent financial scams: Senior Citizens have fixed incomes and even if they are financially stable they are often victims of many *financial scams. In today's modern world, online scams are becoming more advanced and sophisticated so much so even the youth are becoming preys to such crimes and Senior Citizens are anyways not well versed with technology and the fast advancing digital world are frequently victims to such online scams. These scams devastate their life long savings all in one go. In such situations, they require legal aid to defend themselves hence they should be entitled to free legal aid after all these financial scams take place frequently and in multiple forms, through many platforms.

Efficiency of this act, need for a specific act which deals with all of these problems:

There is a significant amount of contention regarding efficient implementation of this act and how much free legal aid is actually provided to the needy especially when it comes the elderly. While there are legislations like Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and Article 41 of Indian Constitution that ensures the State shall make effective provisions for securing the right to public assistance in cases of old age still the Senior Citizens still struggle in many ways when comes to accessing free legal aid.

Herein, some statistics are provided which can highlight the performance gap between policy intent and ground realities and impact of the legal Services Authorities. 'Between April 2023 and March 2024, 15.5 lakh individuals accessed legal aid, even though nearly 80% of India's population is eligible.'

Since 2019, the national per capita spending on legal aid has doubled from roughly ₹3 to ₹7.' Despite free legal aid Services being in place⁶. There are multiple reasons for such numbers:

1)Low budget: there is a low budget for legal aid Services and insufficient funds are allocated to these Services providers comprising of just '1% of the total justice budget (police, prisons, judiciary, and legal aid)' moreover, 'During 2017-18 to 2022-23, NALSA's funds fell from ₹207 crore to ₹169 crore. The utilization of NALSA funds has dropped from 75% to 59%'⁷

Hence the efficiency of the legal Services Authorities has thoroughly fallen in the recent years.

⁶ Boost the Capacity of Legal Aid System in India (Rau's IAS, 2025) <https://share.google/xYZcancAJ57xihQpk> accessed 15 October 2025.

⁷ Boost the Capacity of Legal Aid System in India (Rau's IAS, 2025) <https://share.google/xYZcancAJ57xihQpk> accessed 15 October 2025.

2) Allocation of funds: Funds are being used only for specific functions with ceilings, 50% for legal aid and 25% for awareness and outreach, and 25% for Alternate Dispute Resolution and mediation. This is causing a lot of disparity in the rural areas when it comes to outreach and awareness programmes. Senior citizens as a result are not being given the primacy and importance as intended in the ‘NALSA (Legal Services to Senior Citizens) Scheme, 2016.’⁸

3) Decreasing number of Paralegal Volunteers: Low budget and insufficient allocation of funds also ‘constrict the ability to deploy para-legal volunteers (PLVs) on the ground’⁹. The total number of para-legal volunteers dropped by nearly 38% between 2019 and 2024. From 5.7 per lakh population, there were only 3.1 per lakh population in 2023.’

The act’s sole purpose is to provide vulnerable groups including Senior citizens free legal aid and services making sure they are able to equally access justice regardless of their financial and social footing which has been guaranteed by the Constitution, yet the legal Services Authorities are not able to keep their promise to Senior Citizens.

As a result of these shortcomings, senior citizens are lacking awareness and facing many obstacles while accessing free legal aid Services which should be dealt through the responsible authorities. An interview was conducted by a researcher which is present in an article mentioned down below. The interview was of a judicial official who was kept anonymous throughout the session, his statement was as following¹⁰.

“The LSA needs to be active. They need to give suggestions, especially as to how senior citizens need to be made aware of various legal procedures and how to approach the authorities. The LSA functions need to include appropriate provisions to render legal aid and awareness to senior citizens.” The judicial officer further stated he never heard the legal Services Authorities referring senior citizens’ cases, to the Tribunals or to the courts, to be taken up.

Hence, there is a considerable amount of reasons to state that there is an imminent need for a separate legislation altogether for the Senior Citizens to deal with the problem Senior Citizens face while

⁸ Boost the Capacity of Legal Aid System in India (Rau’s IAS, 2025) <https://share.google/xYZcancAJ57xihQpk> accessed 15 October 2025.

⁹ Boost the Capacity of Legal Aid System in India (Rau’s IAS, 2025) <https://share.google/xYZcancAJ57xihQpk> accessed 15 October 2025.

¹⁰ Reforms in Legal Aid and Awareness with Regard to the Aged in India: A Case for an Inclusive Approach (PubMed Central, 2025) <https://share.google/jmYhNYcYhqaMpRtRY> accessed 15 October 2025

accessing free legal aid. Moreover there is already a dearth of national legislations for Senior Citizens in India. A legislation made solely for the purpose of Senior Citizen and dedicated to free legal aid for the senior citizens will solve the problems of legal awareness and give them clarity regarding the eligibility for free legal aid.

LEGAL FRAMEWORKS

The major legal frameworks that are relevant to this topic are plenty. The legal Services Authorities Act finds its source in Article 39-A of The Indian Constitution.

1)Article 39-A came was inserted into the Indian Constitution by way of the 42nd Amendment Act, 1976 which came into force on 18th December, 1976. Article 39-A is the basically a Constitutional mandate and provision which mandated that the State shall secure such an operation of legal system which will promote justice on a basis of equal opportunity and provide free legal aid to those who require it and lack the financial footing to access justice. Ensuring that no citizen of this State is denied an equal opportunity to secure justice because of any economic or other disability. It is a part of the Directive Principle of State Policy (PART IV)

Article 39-A ‘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.’

2)Legal Services Authorities Act, 1987 which came into force on 9th November, 1995. It is regarded as the statutory basis for free legal aid in India. There were several amendments introduced to include Senior Citizens and to designate senior citizens 60 and above 60 to be eligible for free legal aid by a ‘means based’ or income based eligibility for Senior Citizens. Section 12 of this act specifically mentions all those who are entitled to free legal and as mentioned above, a category for senior citizens is not mentioned explicitly.

National Legal Services Authorities has been established by Section 4 of the act, this statutory body is directed to provide free legal aid, and services to all the citizens of India who are entitled under Section 12 of the act including Senior Citizens. This body is particularly responsible for providing legal services legal clinics, colleges, university et cetera, it is also entrusted with the duty to spread awareness and initiate awareness campaigns in urban and rural areas.

3) There are some other Constitutional Provisions as well that protect the interests of Senior Citizens including,

Article 14 of the Indian Constitution grants the equal opportunity to every citizen including Senior citizens to secure justice regarding of their financial conditions. This is the very basis of the provision of free legal aid.

Article 21, which grants the right to life and liberty. It has been interpreted to include the Right to live with dignity and this right encompasses the Right to live with dignity of Senior Citizens¹¹.

Article 41 of the Indian Constitution which guarantees their rights to work, education, and public support. This article ensures that the state preserves these rights without fail under circumstances of disability, old age, or disease. Article 46 also specifies that the government must protect the educational and economic rights of Senior Citizens. Article 47 specifies that the state must promote people's diet and way of living, as well as their public health.

The proportion of elders In the country's overall population is predicted to rise from roughly 7.5% in 2001 to almost 12.5% by 2026, and beyond 19.5% by 2050.' Which means we need more legislations to cater to the problems of Senior Citizens especially a legislation solely dedicated to providing free legal aid and services to the Senior Citizens. ¹¹

4) NALSA (Legal Services to Senior Citizens) Scheme, 2016 is a scheme that is dedicated that gives a lot of information about the legal frameworks, schemes and Constitutional guarantees protecting Senior Citizens, it also mentions a lot of the challenges Senior Citizens face and gives solutions. Moreover, it lays down the legal mechanisms through which free legal services and awareness is provided to the Senior Citizens.

5) Maintenance and Welfare of Parents and Senior Citizens Act, 2007: This national legislation provides Maintenance to the Senior Citizens and ensures that the children pay the Maintenance in a timely manner. This act ensures that abandoning a Senior Citizen by persons or a person who is in charge of taking care and protecting them is a punishment, liable to fines and imprisonment. While this act does not directly mention about free legal aid, it is very much relevant to the topic.

¹¹ Constitutional Provisions for Senior Citizens – Social Justice Notes (2025) <https://share.google/AY9JS2aN7gsdFgQnA> accessed 15 October 2025. ¹¹ Constitutional Provisions for Senior Citizens – Social Justice Notes (2025) <https://share.google/AY9JS2aN7gsdFgQnA> accessed 15 October 2025.

CASE LAWS

The Supreme Court in this case ‘Khatri II Vs. State of Bihar¹²’ held that it was the State’s obligation to provide free legal aid to accused individuals. The case was about prisoners being blinded in Bhagalpur Central Jail. The Court highlighted that it is the duty of the State to provide free legal assistance to who cannot afford it.

The case of State of Maharashtra v. Manubhai Pragaji Vashi¹³ established that State has a duty to provide free legal aid under the Constitution and in this case, the State failed to uphold by discriminating against private law colleges. Legal aid should be provided not just during a trial, but throughout legal proceedings. The Supreme Court upheld Bombay’s High Court verdict and also expanded the scope free legal aid, the State has to provide grants-in-aid to non governmental law colleges as well.

INTERNATIONAL CONTEXT

There are several models for providing free or affordable legal assistance, in many countries the criteria are needs-based, some also consider a merits-based evaluation.

In Serbia particularly, The “Law on Free Legal Aid” was introduced by National Assembly of the Republic of Serbia on November 9, 2018, and this law targeted victims of ‘domestic violence, victims of torture and/or inhuman and degrading treatment, and persons with disabilities’ these categories included older persons. Main goal is to ensure an equal access to justice and protection of rights for individuals facing financial or social disadvantages.¹⁴

Law on Free of Charge Legal Assistance has an explicit stipulation where, ‘older persons residing in a residential care institution without providing consent are automatically eligible for free of charge legal assistance. Additionally, the same Law stipulates that persons undergoing proceedings related to regaining or being deprived of legal capacity are also automatically entitled to free of charge legal assistance. In many cases such persons are older persons suffering from dementia – with or without a diagnosis. This provides a layer of protection for older persons who have up to now been exposed to different potential risks and fraudulent practices related to their property or finances.¹⁵

¹² Khatri v. State of Bihar [1981] AIR SC 928

¹³ State of Maharashtra v. Manubhai Pragaji Vashi [1995] 5 SCC 730

¹⁴ <https://share.google/jWdNynRsjeGFy2JAG>

¹⁵ _Red Cross of Serbia, Access to Justice,_ (2020) <https://share.google/ifnfSN1pCgqht7kbu> accessed 15 October 2025.

Hence it can be observed the Serbian law on free legal aid compared to the Indian law on free legal aid is much more flexible in regards to the eligibility criteria for accessing free legal aid for Senior Citizens. And has a system of means based eligibility as well as automatic eligibility in some extra ordinary cases are cited above. In contrast to the Indian Law on free legal aid, the flexibility and clarity when in regards to the eligibility criteria is vivid.

CONCLUSION

There are a few things that can be inferred from the above research. Mainly, the existing act of legislative Authorities Act, 1987 has brought about many positive changes in regards to the provisions pertaining to the Senior Citizens. In a country, where population of Senior Citizens is increasing day by day and set to comprise 20% of the population by 2050 there is a dearth of legislation solely dedicated to senior citizens and their needs¹⁶ Hence there is a lot of work is yet to done in regards to,

- The disparity in equal access to free legal aid, justice in rural and urban areas by mindfully employing more Paralegal Volunteers in Rural areas and reduce the concentration of legal service providers in Urban areas.
- Spreading legal awareness of the existing provisions for free legal aid for Senior Citizens by conducting more awareness campaigns and programmes.
- A lack of flexibility in the eligibility criteria for accessing free legal aid which can be relaxed for certain unique circumstances by shifting from a means based test to an inclusive test which balances income level with consideration for unique circumstances.
- A national legislation solely dedicated to the Senior Citizens and their access to free legal services.
- Lack of uniformity in the varying annual income ceiling which is state specific in nature and subject to changes in the discretion of State

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