

ACCESS TO JUSTICE-RIGHT TO LEGAL AID IN INDIA

Abstract

The aim of this paper is to study how the Right to Legal Aid has been implemented in India, how have the courts interpreted this right to broaden the scope of justice, what are the hindrances to ensuring successful legal services, what are the reforms that can be brought about to guarantee that this programme is effective, etc. The object behind this is to understand the importance of legal aid in India, its impact on the lives of the people and the need for an effective legal aid system. The scope has been limited to legal aid in India. An attempt has been made to answer the following research questions-What is meant by Legal Aid? Why is the right to access to justice considered so important? How have the courts interpreted the right to legal aid as given under Article 39A of the Constitution of India? What is the role of other mechanisms such as the legal services authority act to promote access to legal assistance? Why and how have the courts read Article 14 and Article 21 of the Constitution of India along with Article 39A? What are the suggestions made by the courts to broaden the scope of legal aid? Have there been any problems or hindrances in effectively enforcing the right to legal and what are the possible ways to deal with such issues?

Chapter 1 deals with the application and interpretation of Article 39A by the courts in different situation. It focuses on the importance of Article 21 and Article 14 of the Constitution in cases involving access to legal assistance. Chapter 2 studies the judgements of different courts that aim at enhancing the scope of Article 39A in order to promote legal assistance. The chapter largely focuses on the issue of fees and suggestions of various courts in that respect. Chapter 3 analyses the problems encountered in the legal aid movement and proposes measures to sort out these issues effectively.

Introduction

Jurisprudence relating to legal aid can be traced back to the Magna Carta, which in its 40th paragraph provides that, “ *to no one will we sell, to no one will we deny, or delay, right or justice.*”¹

Legal aid means extending legal assistance free of cost to the poor and needy, to those who do not have the resources to engage a lawyer to represent them in legal proceedings in a tribunal, court or before any other authority.² It implies offering legal help to those embroiled in some legal troubles. The insurmountable number of legislations necessitate legal aid for an individual to ensure he is acting within the sphere of laws. The poor or marginally usually have very little or absolutely no knowledge about their rights and the legal services act seeks to ameliorate this situation and increase awareness of legal aid. Poverty leads to disempowerment and socio- economic deprivation, thus disables people from accessing courts for securing legal assistance to protect their rights. Without giving the poor equal opportunity to access law, it deprives them of legal protection and gives excessive powers to the powerful to exploit them. Legal aid is a gift to all individuals who may have been denied access to justice and were victims of atrocities. It is a means of removing inequalities existing in the society in terms of access to legal aid and the abuse of power by the higher sections of society. Since legal aid is provided for free, it is assumed that all societies would have a certain percentage of individuals who would not have access to the legal system due to impoverished circumstances.

Legal aid movement first began in the US with the organization of institutions by the German Society of New York to give legal assistance to the immigrants who had just arrived there. Later, scholarly and literary works promoted ideas that encouraged the Bar to think that it was their duty to give representation to those who had no access to the legal system and this

¹ Multiple Action Research Group(MARG), *Needs Assessment Study of Legal Services Authorities*, iv (2012) available at <http://www.undp.org/content/dam/india/docs/DG/needs-assessment-study-of-selected-legal-services-authorities.pdf> (Last visited on July 28th, 2013)

² Commonwealth Human Rights Initiative, *Legal Aid and Advice*, available at <http://www.humanrightsinitiative.org/publications/police/legal.pdf> (Last visited on July 28th, 2013)

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lead to the growth of Public Interest Litigation as well. Then there were private firms who were solely dedicated to the cause of expanding the right to legal aid.

International conventions and their provisions relating to legal aid inspired the schemes for legal services in India too. For instance, Article 8(e) of the American Convention on Human Rights provides the accused with an 'inalienable' right to be aided by a state provided counsel, who may or may not be paid (according to the domestic law) in case the defendant is unable to defend himself on his own or appoint a counsel for the same in the time frame stipulated by law. The European Convention on Human Rights, Article 6, gives the accused who doesn't have adequate resources to afford legal assistance or fails to defend himself, the right to be given a lawyer of his choice by the state, in order to satisfy the aims of justice. It has been held in *Monnell v. Morriss* that the right under Article 6 cannot be allowed when the defendant has already received representation and a fair trial has taken place but he demands legal aid to appeal against his conviction. Thus in order to give a proof of need for legal aid in interest of justice, a written submission requesting the same is sufficient. Also, when the state appointed counsel turns out to be incompetent to properly defend the accused, then the domestic court is legally required to resolve the problem.³

India, being a modern welfare state, must seek to promote the well being of its citizens through a just laws and equality of opportunities to all.

“Article 39A. Equal justice and free legal aid-

The State shall secure that the operation of the legal system promotes justice, on the 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”⁴

Article 39A, forms a part of the Directive Principles of State Policy, and is given under Part V of The Constitution of India, 1950. It was inserted by the Constitution (42nd Amendment) Act, 1976.⁵ It essentially imposes a duty on the state to ensure that the legal system functions in a manner that furthers justice, provides equal opportunity and more importantly, devises

³ D.D. Basu, *supra* note 4, at 4099

⁴ Art. 39A, THE CONSTITUTION OF INDIA, 1950

⁵ D.D. Basu, COMMENTARY ON THE CONSTITUTION OF INDIA, vol. 3, 4098, 8th edn. (2008)

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appropriate mechanisms or legislations so that it can extend legal aid free of cost. The purpose of this is to promote equality so that any citizen is not denied the right to seek justice because of economic incapacity to bear the cost of legal aid.⁶

The article orders the State to give free legal aid so as to promote the goals of equal opportunity and justice as envisaged in the Preamble.⁷ From the language of the Article, it can be construed that it is mandatory in nature and the use of words such as ‘*shall*’ also shows this.⁸

Application of Article 39A by the Courts

The courts have also stressed on the importance of this article. The Delhi High court has said that, “*It is emphasized that the legal system should be able to deliver justice expeditiously on the basis of equal opportunity and provide free legal aid to the citizens to ensure that opportunities for securing justice are not denied to any citizen by reasons of economic or other disabilities.*”⁹

The legal services authority act, 1987

The Parliament in furtherance of the objective of this Article attempted at reducing the work load on the courts by enacting the Legal Services Authority Act, 1987 that provide for setting up of *lok adalats* that serve as an alternate dispute resolution system.¹⁰ This initiative was welcomed by the Supreme Court which has urged other authorities to follow this model and set up *adalats* on similar lines.¹¹ The Legal Services Authorities Act allows a person to engage legal aid under the act if he has to defend or file a case and if he belongs to the following category: member of Scheduled Caste or Scheduled Tribe, or he is a victim of human trafficking or a natural disaster or begar, or if it’s a woman or child, or if the

⁶ M.P. Jain, INDIAN CONSTITUTIONAL LAW, vol. 2, 1616, 5th edn. (2003)

⁷ *Id.*

⁸ M.P. Jain, *supra* note 5, at 1616.

⁹ Abdul Hassan v. Delhi Vidyut Board, AIR 1999 Del 80 *as cited in* M.P. Jain at 1616

¹⁰ V.N. Shukla, THE CONSTITUTION OF INDIA, 304, 10TH edn.(2001)

¹¹ M.P. Jain, *supra* note 5, at 1616

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individual is mentally ill or suffers from any disability, etc.¹² or if it is a case of public significance or a special case requiring legal aid.¹³ Request for legal services can be denied if the applicant has sufficient resources to seek justice, doesn't satisfy the given eligibility criteria or when his application has no merits.¹⁴ The legal assistance provided may also be withdrawn in case it is found that the legal aid has been obtained fraudulently or by misrepresentation, if there is a significant change in the circumstances of the accused, on account of another counsel being appointed to assist the accused, because of misconduct or non cooperation or death of the aided individual, etc.¹⁵ The legal services authority undertakes to pay the cost of court fees, charges for drafting and preparing legal proceedings, charges of legal counsel, practitioner or advisor, costs of other related paper work, etc.¹⁶ the legal services act not only resulted in establishment of Legal Services Authorities at the district, state, national levels and legal service committees at the high court, supreme court, court at *taluka* levels, but many legal service schemes with respect to paralegals, legal clinics, programmes for unorganised workers, etc. were also formulated.¹⁷ Legal services authorities are significant to the development of legal aid programmes because they can expand the right to justice for the poor and discriminated sections of society.¹⁸

Prior to this legislation of 1987, the only similar provision for legal aid existed in Section 304(1) of the Code of Criminal Procedure, which although restricted to Sessions Cases, provided that – “*Where, in a trial before the Court of Session, the accused is not represented by a pleader, or where it appears to the court that the accused has no means to engage a pleader, the court shall assign a pleader for his defence at the expense of the State.*”¹⁹

Reading Article 39A along with Article 21 of the Constitution of India

The Supreme Court while understanding the concern of the poor who's life and liberty may be jeopardised when they are arrested and have no means of securing justice, has reiterated the significance attached to free legal aid not only in terms of Article 39A but also with

¹² Section 12, LEGAL SERVICES AUTHORITIES ACT, 1987

¹³ *Supra* note 2.

¹⁴ *Supra* note 2.

¹⁵ *Supra* note 2

¹⁶ *Supra* note 2.

¹⁷ *Supra* note 1, at iv.

¹⁸ *Supra* note 1, at vi.

¹⁹ D.D. Basu, *supra* note 4, at 4098

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respect to Article 14 and Article 21.²⁰ Article 14 provides for equality before law and equal protection of laws.²¹ To ensure that there is equality, parties to a legal case must have equality of opportunities in accessing the courts and defending their case. But the high legal fees, cost of proceedings, creates inequality of opportunities for the impoverished who are unable to afford this and this calls for free legal aid to be given to them.

It has been held that in order to fulfil the ideal of equal justice as envisaged by Article 39A, the concept of legal aid as described under Article 21 should also be dealt with meaningfully.²² Thus in pursuance of reading Article 39A along with Article 21, extension of free legal aid at the cost of the State has been elevated to the level of a Fundamental Right of an accused who's life or personal liberty may be in jeopardy.²³

To ensure that justice is done, the right to seek legal aid is not for the poor or illiterate accused to request for but in *Suk Das v. Union Territory of Arunachal Pradesh*²⁴ it was held that it is the responsibility of the presiding judge to make the accused aware of his right to demand free legal assistance from the State if he cannot afford to engage a lawyer himself and if the accused is convicted without being informed of his right to legal aid and subsequently not having a lawyer to represent him at the trial, the conviction would be declared invalid.²⁵ However, this doesn't mean that in when there is no legislation to implement Article 39A, the accused can compel the state to provide him with a lawyer via a writ petition. He must apply to the Sessions Court for the same, as per S.304(1) of the Criminal Procedure Code, 1973 which provides that the court must provide the accused with the a lawyer to defend him at the cost of the state if the accused doesn't have the required means to engage one for himself.²⁶ Also, when the accused is unable to access legal representation because of poverty and the State fails to offer legal assistance free of cost and with the assent of the accused, the trial would be seen as being vitiated.²⁷ Also, in *Indira Gandhi v. Raj Narain*²⁸, it has been observed that since upholding the rule of law is of utmost importance as it is a part of the basic structure, so no one should be condemned unheard and trial without legal representation would be vitiated.

²⁰ M.P. Jain, *supra* note 5, at 1616

²¹ Art. 14, THE CONSTITUTION OF INDIA, 1950.

²² D.D. Basu, *supra* note 4, at 4098

²³ M.P. Jain, *supra* note 5, at 1616

²⁴ *Suk Das v Union Territory of Arunachal Pradesh*, AIR 1986 SC 991

²⁵ A.P Datar, COMMENTARY ON THE CONSTITUTION OF INDIA, vol. 1, 585, 2nd edn. (2007)

²⁶ *Kishore Chand v. State of H.P.* 1989 AIR 702

²⁷ *Hussainara v. State of Bihar*, AIR 1979 SC 1369

²⁸ *Indira Gandhi v. Raj Narain* AIR 1977 SC 69

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While reading Article 39A together with Article 21, courts have also arrived at the following guidelines to administer justice-Jail authorities are required to give a copy of the judgement free of cost to the prisoner so he can choose to exercise his right of appeal to higher courts²⁹; the right to free legal aid commences from the first time he is produced before a magistrate and continues whenever he is required to be produced on remand³⁰; the right under 39A even applies when trial doesn't take place in proceedings under Section 110 of the Criminal Procedure Code, 1973³¹. Also, while reading Article 142 of the Constitution of India alongwith Article 39A and Article 21, the Court has observed in *Madav Hayavadanrao Hoskot v. State of Maharashtra*³² that the accused has a right to seek counsel to aid him in appealing against the verdict of the case in order to ensure complete justice.

Article 22(1) of the Constitution also provides that no person who has been arrested and detained in custody shall be denied the right to consult or be defended by a legal practitioner of his choice.³³ ('his choice' implying that the accused must be acceptable to the accused and not that he can pick and select any lawyer he wishes for).

When there were objections being raised against granting Kasab the right to legal aid on account of being an enemy alien and thus not being entitled to the right to seek legal services, it was observed that treating kasab as an enemy alien to deny him the right to legal aid would not only set a bad example for future cases but also that since the right to counsel has gained the status of a basic human right in the current scenario, individual countries cannot by their own discretion deny foreigners right to such assistance because of the local laws of the land. It was held that since Kasab hasn't been declared to be an enemy alien by any executive or parliamentary authority, he should have the right to seek a counsel as per the provisions of Article 22. The court also said that just because there is discontent and opposition from the civil society. One cannot invoke exceptions to deny rights unless a legally sanctioned authority determines who is to be categorised as an enemy alien.³⁴

²⁹ Hoskat Madhav Hayavadanrao v. State of Maharashtra, AIR 1978 SC 1548

³⁰ Khatri v. State of Bihar, AIR 1981 SC 928

³¹ Gopalanachari v. State of Kerala AIR 1981 SC674

³² Madav Hayavadanrao Hoskot v. State of Maharashtra 1978(3) SCC 544

³³ Art 22(1), THE CONSTITUTION OF INDIA, 1950.

³⁴ V. Venkatesan, *Due Process*, THE HINDU, available at

<http://www.hindu.com/fline/fl2602/stories/20090130260203300.htm> (Last visited on July 28th, 2013)

Recommendations made by the Courts

In *Ranjan Dwivedi v. Union of India*³⁵, the Supreme Court declared that a writ of mandamus cannot be issued to implement Article 39A but the social goal of free legal service and equal justice can be secured only by means of appropriate legislations or schemes.

The mandate of Article 39A though directed at the legislature and executive can also extend to the courts since the judiciary is also enabled to do some law making within the boundaries of the constitution.³⁶

The Supreme Court has constantly encouraged the governments at State level to fulfil their obligation to implement comprehensive legal aid programs to promote goals of justice through equal opportunity. The Court in *Centre for Legal Research v State of Kerala*³⁷, observed that to ensure that these programmes are successful the state should extend its support to voluntary organisations to encourage public participation in this endeavour of providing free legal aid and the court also said that these programmes are needed to ensure that social justice reaches the people, hence it cannot be restricted to the traditional means of extending legal aid through litigation and it should keep the changing socio economic situations in mind and adopt a dynamic method involving legal literacy, setting legal service camps, promoting public interest litigations, introducing Lok Adalats, etc.³⁸ Also, these social groups and voluntary organisations should be completely free from the control of the state with respect to implementation of schemes furthering legal aid.³⁹

The Legal Aid Committees that have been set up by the High Courts and Subordinate Courts in pursuance of the goals of Article 39A, not only ensure quick and affordable justice but also decrease burden of arrears of cases.⁴⁰ Courts also have the power to issue instructions that a

³⁵ *Ranjan Dwivedi v Union of India* AIR 1983 SC 224

³⁶ M.P. Jain, *supra* note 5, at 1616

³⁷ *Centre for Legal Research v State of Kerala*, AIR 1986 SC 2195

³⁸ Datar, *supra* note 24, at 585.

³⁹ D.D. Basu, *supra* note 4, at 4099

⁴⁰ D.D. Basu, COMMENTARY ON THE CONSTITUTION OF INDIA, vol. 1, 157, 8th edn.(2007)

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prisoner be given legal aid by providing him with contact to voluntary legal assistance centres.⁴¹

Discussions surrounding fees in securing legal aid

The Supreme Court, while referring to Article 39A, also pointed out that the court fees should be in accordance with the expenditure incurred in administering justice since high fees may deter or prevent access to justice for those who cannot afford it.⁴² In *Mahadev v. State of Karnataka*⁴³ as well, it was ruled that a high court fees, being unfair and unjust to a common man, even though levied on the basis of the market rate, is in violation of Article 39A and hence invalid.

It has been observed that ,*“Court fees if seriously restricts the right of a person to seek his remedies in courts of justice should be strictly construed. After all, access to justice is the basis of the legal system. In that view, where there is doubt, reasonable of course, the benefit must go to him who says that, ‘lesser court fee alone need to be paid....’”*⁴⁴

Even Third World countries have recognised that an effective right to seek justice is one of the prime social rights that have emerged, along with Public Interest Litigation (PIL), pro bono litigation, social action groups, etc. and the right to justice is regarded as being as important as a human right in countries that endeavour to promote legal rights.⁴⁵ G

Granville Austin has also correctly observed that in India, the procedure to secure justice is highly exorbitant and prohibitive for the common man because of the lawyer’s cost along with the fees that is to be paid while registering the case. He also refers to the 14th Law Commission Report which describes India as the only modern government that discourages a person whose rights have been violated from seeking remedy by imposing a tax on the redressal he seeks. The Law Commission not only recommended a low fee for seeking remedy under Article 32 and Article 226 of the Constitution but also suggested extending free legal aid to the poor who cannot afford legal representation and seek payment on a graduated scale from those who can pay.⁴⁶

⁴¹ Sheela Barse v. State of Maharashtra, Air 1983 SC 378

⁴² Central Coal Fields v Jaiswal Co. Ltd., AIR 1980 SC 2125

⁴³ Mahadev v. State of Karnataka, AIR 2002 Kant 338

⁴⁴ D.D. Basu, *supra* note 4, at 4100

⁴⁵ D.D. Basu, *supra* note 4, at 4100

⁴⁶ D.D. Basu, *supra* note 4, at 4097

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The case of *Ranjan Dwivedi v. Union of India*⁴⁷ also deals with a dispute regarding the fees that was payable to an advocate who was aiding the litigation in question as an amicus curiae, or friend of the court. The statutory requirement, as per the Rules of the High Court that applied to this case, the advocate was liable to be paid only Rs. 24. However, the defendant contested this provision and argues that no advocate would be willing to render his services for such a meagre amount and no reputed lawyer would be likely to represent the accused in such a situation. The justification provided for a demand for a higher fees was that since the prosecutor is usually a senior lawyer, the accused also has a right to be provided with a lawyer by the state, based on equal opportunity. The Supreme Court was convinced by this argument and held that the fee payable should be enhanced. The court also gave instructions to all state governments to make arrangements for granting legal service free of cost to the poor accused individual. But the condition governing this free legal aid to the poor was that the offence is of such a nature that on possible conviction for the same, it would either lead to imprisonment or if the circumstances or requirements of social justice make it necessary for the accused to be provided with legal assistance for free.⁴⁸

However there may be instances when free legal representation need not be given by the state, these include offences such as child abuse, or offences that violate laws enacted to prohibit prostitution, economic offences, cases relating to contempt of court, defamation, perjury or malicious prosecution, cases relating to election, cases where the penalty imposed is less than Rs. 50, cases when the person seeking legal aid is not related to the proceedings and non compliance would not prejudice his interests.⁴⁹

Some issues surrounding legal aid

The right to legal aid is not always freely available and there are some restrictions and regulations that have to be followed while exercising this right. In *State NCT of Delhi v. Navjot Sandhu*⁵⁰, the court recognised that when on a non-evidential basis a party to a dispute keeps insisting that the amicus curiae hasn't performed his role effectively, the court should not merely disband the counsel and look for another one that pleases the party without adequately investigating into the performance of the counsel against whom the complaint has

⁴⁷ *Ranjan Dwivedi v Union of India*, AIR 1983 SC 624

⁴⁸ D.D. Basu, *supra* note 4, at 4099

⁴⁹ *Supra* note 2.

⁵⁰ *State of NCT Delhi v. Navjot Sandhu* (2005) 11 SCC 600

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been made and the court must also keep in mind that an unfavourable verdict at the trial may cause the party to make a claim about his counsel but this should not be entertained without proper judicial scrutiny.⁵¹

The mission to extend the right to legal aid also has some to encounter some problems. One of the concerns as highlighted by Granville Austin- "*Legal Aid became a statutory right in the 1990s, but the government established legal aid agency is financially undernourished.*"⁵²

The legal system was reluctant to comply with the directives issued under Article 39A . The purpose of the provision was also defeated when an inexperienced young lawyer would be appointed to defend the accused⁵³. But to deal with this issue, the court has observed that since international charters provide for adequate and effective defence, it can be construed that Legal aid given under Article 39A also implies that the counsel appointed by the State should also be competent to defend the accused.⁵⁴ There may be situations where if the counsel provided by the state failed to appear for the hearing of the case on the fixed date and the case would be decided against the interest of the accused but the Supreme Court did intervene in such a case in *Jainendrakumar v. State of Maharashtra*⁵⁵ and set aside the High Court's verdict and issued instructions for a fresh hearing.

In a case the accused was held guilty on account of murdering his fellow villager over a water dispute and was sentenced to life imprisonment. While the co-accused were acquitted as they received adequate legal representation, the accused languished in jail without any lawyer to argue his case and do the cross examination after his own lawyer had dropped out in the beginning. The Bombay High Court in an unprecedented decision turned over the sentence and set the accused free without ordering a re-trial since the lawyer appointed by the legal panel failed to turn up. It was observed that such lawyers must have strict penalties to deal with and their name must be struck off the Panel if they are unable to represent the client and also that the fees of the lawyers engaged with the legal aid panel should be increased to promote efficiency. The court also pointed out that even if the accused refused a legal representative while recording his plea at the stage of responding to the charges levelled against him, and if found guilty at the stage of recording evidence without having legal

⁵¹ D.D. Basu, *supra* note 4, at 4097

⁵² *Per G. Williams as cited in D.D.Basu at 4100*

⁵³ *State of Haryana v. Darshana* 1979 AIR 855

⁵⁴ *Sheela v. State of Maharashtra*, AIR 1983 SC 378.

⁵⁵ *Jainendrakumar v. State of Maharashtra* (1990) Supp SCC 777

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assistance then the obligation is on the Sessions Court to look into whether the accused person actually requires legal aid.⁵⁶

It has also been observed that in spite of a decent budget that has been set aside for the purpose of rendering legal services, a huge chunk of the amount remains unused and the money that is spent is sometimes unaccounted for. This reflects a lack of awareness about the right to free legal service. Also, even though the legal aid programmes undertake the responsibility of meeting most of the expenditure in defending the accused, what is ignored is that there is still some bribe that is paid to legal aid counsel, the court staff, the policemen for recovering relevant documents, to prison officers, etc, and hence the purpose of free legal aid is defeated as there is still some cost involved.⁵⁷

The lack of an expert to oversee the finances of the legal services has led to understaffed institutions, excessive roles and large funds at disposal. Also, the infrastructure in the legal aid committee and centres is outdated. There is no electronic provision for filing of complaints or tracking progress of cases. No special arrangements have been made for the disabled to have access to the legal aid system. The system lacks transparency and doesn't give adequate answers to the applications filed under the Right to Information Act. Some literacy materials are hard to comprehend because of complex language.⁵⁸

The fact that there are still many sex workers, the mentally disabled, etc. who are labelled as criminals by the system and have to rot in the prisons is an example of how the right to legal assistance is crucial to protect their right to life and self respect so that by criminalising them, they are not made to go back to their miserable state of poverty and crime.⁵⁹

A certain survey has also revealed some deficiencies in the legal service programme. Lawyers engaged in free legal aid are not given adequate training on legal aid nor is there any special provision for recruiting lawyers from marginalised groups like the disabled, women, scheduled castes.⁶⁰ The clients are not asked for feedback on their experience with the legal services authority, there is no effective complaint mechanism against deficient quality of

⁵⁶ *Defending the Right to Legal Aid*, available at <http://www.indiatogether.org/2008/apr/hrt-legalaid.htm> (Last visited on July 23rd, 2013)

⁵⁷ V. Venkatesan, *Dimensions of Legal Aid*, THE HINDU, available at <http://www.hindu.com/fline/fl2218/stories/20050909000907500.htm> (Last visited on July 28th, 2013)

⁵⁸ *Supra* note 1, at 6.

⁵⁹ *Supra* note 1, at 6.

⁶⁰ *Supra* note 1, at 5

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legal aid provided, there is no record of progress of cases as they are left to the legal aid panel lawyer to deal with in its entirety, there is no method to evaluate or follow up the lawyer's performance or ensure timely payment of fees which itself is inadequate.⁶¹ Paralegals are inexperienced amateurs, have ambiguous roles, are not trained sufficiently, they have uncertain remuneration.⁶² State institutions such as legal authorities and NGOs are not proactive in nature and do not extend support to the minority and disability institutions who are not well aware of the legal services authority and engage private lawyers instead.⁶³ Legal camps, though held, are not efficiently organised and the audience is not intimated of a program that is going to be held for them, the sessions are monotonous, lengthy and instructive rather than interactive and is carried on by untrained personnel which only adds to the lack of awareness about legal services.⁶⁴

Report and Recommendations of committees reviewing the constitution

The National Commission that was set up to evaluate and review the functioning of the Constitution submitted a report on 31st March, 2002, that made some recommendations relating to access to justice and legal aid.

The Commission made the following recommendations-

- In extension of Article 30 of the Constitution of India, another Article called Article 30A be inserted as follows:

"Article 30A- Access to Courts and Tribunals and Speedy Justice:

1) *Everyone has a right to have any dispute that can be resolved by the application of law decided in a public hearing before nay independent court or where appropriate, another independent and impartial tribunal or forum.*

2) *The right to access to courts shall be deemed to include the right to reasonable and effective justice in all matters before the courts, tribunals or other fora and the State shall take all reasonable steps to achieve the said object.*⁶⁵

- Legal aid is an imperative tool needed to effectively implement the fundamental rights given under Part III of the Constitution in order to assist the needy.
- The commission also suggested that Article 39A be shifted to Article 30B so it could fall under Part III of the Constitution, and be given the status of a fundamental right.⁶⁶

⁶¹ *Supra* note 1, at,5

⁶² *Supra* note 1, at 5

⁶³ *Supra* note 1, at 5

⁶⁴ *Supra* note 1, at 6

⁶⁵ Chapter 3, Report of the National Commission to Review the Working of the Constitution *as cited in* D.D.Basu at 4101

A review of the study conducted by MARG

A study has revealed some practices in the Delhi and Haryana legal service authorities that are worth emulating by other legal service cells. Some of the welcomed initiatives of the Delhi legal services authorities include training programmes of paralegals and legal panel lawyers, internship schemes, assistance for rape victims and missing children, video conferencing in jail, etc. Haryana, on the other hand, has provisions for a toll free legal aid helpline, legal assistance to victims of rape and child abuse, programmes for paralegals, legal service centres, well managed website for legal help, student literacy program, etc.⁶⁷ The clients of *lok adalats* and even the lawyers who engage with it are usually satisfied with its functioning and decisions.⁶⁸ Legal materials cover a broad range of issues and are usually of good quality.⁶⁹

Some recommendations made include-

- Empanelling lawyers based on a proper selection criteria- emphasising on experience in related fields, commitment to justice, pro bono experience, and preference to those from marginalised groups; quick selection process; revising the panel regularly based on satisfaction of services extended.⁷⁰
- Monitoring the counsels appointed through feedback approach, regular progress report of cases undertaken by the lawyer, putting in place a monitoring committee, etc.⁷¹
- Training of lawyers in legal developments and also in shaping their attitude to different section of the society they may have to engage with and also regular compensation of lawyers appointed.⁷²
- Para legal training to encompass an understanding of their functions, legal processes to be undertaken by them, how to handle possible issues, rights of the marginalised, redressal mechanism, etc.⁷³

⁶⁶ *Id*

⁶⁷ *Supra* note 1, at,4

⁶⁸ *Supra* note 1, at 6

⁶⁹ *Supra* note 1, at 6

⁷⁰ *Supra* note 1, at 7

⁷¹ *Supra* note 1, at, 7

⁷² *Supra* note 1, at 8

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- Improved and efficient coordinating mechanisms to be set up with state and nonstate voluntary organisations dealing with rights of women, children, scheduled castes/tribes, disabled, minority sections, prisoners, etc.⁷⁴
- Efficient organisation of legal awareness camps, schemes and further expansion of legal literacy.⁷⁵
- Spreading awareness of lok adalats, training the personnel and encouraging people to settle disputes in lok adalats.⁷⁶
- Upgrading the infrastructure at the legal service centres, updating the website, appointing more accounting and budgeting related staff with financial experience.⁷⁷
- Increasing the role of NGOs and empowering them further
- Help in establishing and preserving the contact between the accused and their friends and families

Conclusion

The concept of legal services has been imbibed in the working of the judiciary in order to secure and promote justice in the society. It's the duty imposed on the government to grant legal assistance. Given the lack of awareness in the country, expensive counsels, uncertain and time consuming judicial proceedings and the menace of corruption in the judiciary, it is imperative to refine the process of accessing justice in order to assure justice to the needy. Overall, it can be said that India has performed decently in establishing mechanisms to dispense legal aid efficiently. By instituting Lok Adalats, Public Interest Litigation, Nyay Adalat, etc. it has only furthered the cause of legal services. However, like all policy programmes, legal aid also suffers from some inefficiencies such as access and awareness of legal to a small section of the population, and this may be overcome by expanding legal literacy to the marginalised groups as well. Also if a proper institution is put in place to organise and check the affairs relating to legal aid, the programme would be able to do better. Other voluntary and non state organisations should also be encouraged to engage themselves in the granting free legal help so that more people can have access to justice. Legal aid

⁷³ *Supra* note 1, at 8

⁷⁴ *Supra* note 1, at 9

⁷⁵ *Supra* note 1, at 10

⁷⁶ *Supra* note 1, at 10

⁷⁷ *Supra* note 1, at 10

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institutions should also be made more accountable to some autonomous external agency supervising the working of these programmes. Legal help initiatives must also make use of alternative dispute resolution mechanisms such as conciliation, client counselling, mediation. Etc. also, the benefits of legal services should not only be directed to the poor sections of society but also to those suffering from disability and discrimination such as prostitutes , the mentally challenged, etc. the role of law schools in promoting legal aid should also be emphasised, more legal aid centres should be set up and clinical education and pro bono work by students and also by law firms should be encouraged.