

THE PROVISION OF FREE LEGAL AID IN INDIA: INTERNATIONAL HUMAN RIGHTS ASPECT AS WELL AS THE CONSTITUTIONAL PURVIEW

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Abstract: One of the basic human rights of an individual irrespective of their age, caste, colour, nationality or any other status, is to have access to justice. All other rights lose their purpose without access to justice. An individual may have all other rights, though, if they don't have an authority that looks after those rights and they cannot get those rights enforced at the time of need, all the rights would be useless making arbitrary violation of rights prevalent. Though said like a simple statement, the word 'justice' in itself is a multi-faceted term and needs to be understood from various angles. One of the basic requirements of having access to justice and getting justice in times of need is that the citizens of the State must be legally aware. Also, 'access to justice' means that a person must have access to the means to plead justice. First of all, individuals need to completely know and understand their rights and duties. Furthermore, they must be able

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to present themselves in front of competent authorities whenever those rights are violated. For those who lack the resources to access justice, the State shall provide the means through which they can attain it. Thus, the concept of free legal aid has been evolved over the years. The United Nations too has repeatedly emphasised upon the State's duty to make their citizens legally aware and to provide free legal services to the citizens who cannot afford it. In this research, the provision of free legal aid in India is thoroughly explored. The research highlights the International Human Rights aspect of Free Legal Aid and the provision of Free Legal Aid in the Indian constitution. Also, it gives an idea about who is entitled to free legal aid and the mode in which the goals put forth by the International Human Rights law is achieved in India.

Keywords: Human Rights, Constitutional law, Legal Aid, Fundamental Right, Law

Statement of Problem

An individual is born with some natural rights which are evolved over the years into various regimes. They are also known as the human rights of an individual. A person, by virtue of being human, holds some rights and those rights are called human rights¹. These rights are inherent and the State does not provide them. Though, the State has to make sure that human rights are not violated in any scenario. One such human right is the right to attain justice in a time of need. When an individual's rights are infringed, the person seeks justi-

1 J.K. Das, Human Rights Law and Practice (PHI Learning Private Limited, 2016)



ce². However, the path to justice needs to be accessible to all. To make sure of this accessibility, the concept of free legal aid was evolved. Universally, free legal aid has many faces and all the faces have one central goal, that is, to help people attain justice whenever their rights are infringed. The problem which is addressed in this research is about the provision of free legal aid under the human rights law and the Indian constitution. The research also focuses upon the manner in which free legal aid provision is realized under Indian law and the reason behind its importance.

Review of Literature

The literature which is

² Quinetta Roberson, “Access to justice as a human right, organizational entitlement and precursor to diversity and inclusion” 39 Equality, Diversity and Inclusion 787 (2020)

available and studied for this research is:

Articles

1. Kristel Juriloo, “Free Legal Aid – a Human Right”, 33 Nordic Journal of Human Rights 203 (2015)

The article provides an analysis of the concept of free legal aid as a human right. The author demonstrates that how free legal aid serves as a method to secure access to justice for all individuals irrespective of the State they are a part of.

2. Asher Flynn, Jacqueline Hodgson, et al., “Legal Aid and Access to Legal Representation: Redefining the right to a fair trial”, 40 Melbourne University Law Review 207 (2016)

This article also gives an analysis of legal aid and how it provides an opportunity for a fair

trial. The authors argue that by incorporating the legal aid mechanism into the legal machinery of the State, the State actually helps in achieving the goal of realization of the right to a fair trial for each and every individual.

3. Dolly Choudhary, “Concept of Free Legal Aid – A comparative analysis of free legal aid in India, United Kingdom and Australia”, 3 International Journal of Law and Legal Jurisprudence Studies 104 (2016)

The article provides in-depth research on the concept of free legal aid and its implementation mechanism in India, the United Kingdom and Australia. It helps in getting an insight into the national and international mechanism of free legal aid.

4. Asri Wijayanti, “Legal Aid for Marginal

Communities”, 97 Man in India 251 (2017)

This article gave an insight into the provisions of free legal aid in India to the marginalized community and thus helps in drawing out conclusions regarding the realization of the right to equality and equality before the law in India through free legal aid services.

5. G. Mallikarjun, “Legal Aid in India and the Judicial Contribution”, 7 NALSAR Law Review 240 (2013)

The author highlights the judicial contributions made towards free legal aid in India and the role judiciary has played in evolving the present scenario of free legal aid. The author has used several landmark judgments of the Apex Court to highlight the role of the judiciary in the provision of free legal aid servi-



ces to the poor.

6. Andrew Higgins, “Legal Aid and Access to Justice in England and India”, 26 National Law School India Review 13 (2014)

The author gives a comparative analysis of access to justice through legal aid in England and India. This helps in understanding different state mechanisms towards the goal and helps in determining the right course of action for free legal aid.

7. Shazia Choudhary and Jonathan Herring, “A human right to legal aid? – The implications of changes to the legal aid scheme for victims of domestic abuse” 39 Journal of Social Welfare and Family Law 152 (2017)

The Article highlights the human rights aspect of legal

aid in India and how the changes to the legal aid scheme have affected the victims of domestic abuse. The authors’ contributions help in drawing out a practical scenario for the free legal aid service by referencing a unique group of victims, which in this case was the victims of domestic abuse.

Books

1. Raman Mittal, “Legal Aid: Catalyst for Social Change”, (Satyam Law International, New Delhi, 2012)

The book provides a thorough sociological perspective on the provision of legal aid. The author demonstrates that how legal aid services prove to be a catalyst in bringing about social changes and help in the overall development of society.

2. S.S. Sharma, “Legal Aid to the Poor: The Law and Indian Legal System”, (Deep & Deep Publications, New Delhi, 1993)

The author in his work gives a complete explanation of the Indian law and legal system concerning the provision of free legal aid to the poor in India.

3. Dr. K.L. Gupta and Dr. V.B. Mandaliya, “Legal Aid and Awareness in India: Issues and Challenges”, (LAP Lambert Academic Publishing, New Delhi, 2018)

The authors in their work give an analysis of the issues and challenges towards legal aid and awareness in India. They also provide certain suggestions on how the State may be able to overcome those challenges and how the existing model of free legal aid services must be modi-

fied to address the present issues.

4. Francesco Francioni, “Access to Justice as a Human Right”, (Oxford University Press, New York, 2007)

In this book, the concept of access to justice as a human right has been dealt with. The author argues that without access to justice, all other human rights lose their essence and the law enforcement function of the State crumble down to pieces.

5. J.K. Das, “Human Rights Law and Practice”, (PHI Learning Private Limited, New Delhi, 2016)

The book provides a detailed description of human rights law and its implementation in India. This work helps in understanding how legal aid is a constituent of the International Human Rights Bill and how the-



se rights are inherent in the Indian Constitution.

Research Objective

The objectives for the given research are:

- To evaluate the concept of free legal aid.
- To analyse the importance of free legal aid and critique upon the human rights aspect of the same.
- To give reference towards the expressed and implied provision of access to justice under the International Human Rights Law.
- To analyse the provision of free legal aid as given under the Indian constitution and the relation of the provision to the objectives of the constitution.
- To discuss the mechanism of free legal aid ser-

vices in India and its need and importance for the citizens of India.

Research Questions

The research questions which are addressed and attempted in the given research are:

- What is the concept of free legal aid and why is it important?
- What is the concept of free legal aid under the International Human Rights Law?
- What is the provision of free legal aid under the Indian Constitution?
- How is free legal aid implemented in the Indian mechanism?

Research Methodology

In the given research, the methodology which is used

for it is secondary research methodology. This methodology aims at the investigation of different secondary sources of data. The sources which are used in this research are primarily books, articles, legal reviews and reports, discussions, case laws, etc. The research primarily focuses on the data derived through previous researches and discussions in a similar field of law. The methodology of data collection and analysis in this research reduces the scope of error since the sources used are credible and verified through publications. Also, views of different authors are discussed in this research to derive logical conclusions of the given research questions³.

The Concept of Free Legal Aid

3 E. Smith, "Pitfalls and promises: The use of secondary data analysis in educational research" 56 *British Journal of Educational Studies* 323 (2008).

Access to justice is one of the basic aspects of securing the rights of individuals. Every person has some basic human rights which are not provided by the State but are inherent to all human beings. When such rights are infringed in any way, there needs to be a mechanism for every State which can help in the administration of appropriate remedies and corrections to the ones whose rights are infringed. Also, such a mechanism needs to be in access of every individual otherwise, the purpose of the mechanism remains unfulfilled⁴. This accessibility needs to be such that those who lack the resources to attain justice, must be provided with an opportunity to access it⁵. One of the concepts

4 D.L. Rhode, *Access to Justice* 3-10 (Oxford University Press, New York, 2004)

5 Dolly Choudhary, "Concept of Free Legal Aid – A com-



which were evolved for the realization of this goal is 'free legal aid'. Free legal aid although primarily deals with the provision of free legal assistance to those who cannot afford the legal system, however, it also encompasses the larger goal of enhanced legal awareness amongst the public at large⁶.

Legal aid programs thus aim to not only provide legal assistance to the poor and needy but also aims at enhancing legal education and awareness in society through appropriate measures. The State aims to incorporate basic information of the rights and duties of an individual into pri-

parative analysis of free legal aid in India, United Kingdom and Australia" 3 International Journal of Law and Legal Jurisprudence Studies 104 (2016)

6 R.K. Jordan and J.M. Lindsay, "Law and the poor in rural India: The prospects for legal aid" 5 American University Journal of International Law and Polity 655 (1989)

mary school education and publish the necessary legal reforms and changes in such a way that they are accessible to all. Legal aid programs in the forefront help in the delivery of justice, but they also ensure equality before the law and equal protection of law to all further fulfilling the agenda of maintaining the rule of law in a State⁷.

Even if an individual is a criminal, they have a right to legal representation in court. This is in accordance with the basic principle of audi alteram partem, which means that 'no party shall go unheard before the Court'⁸.

It is the concept and provision of legal aid which helps in the fair trial of an individual and ensures that justice is delivered wherever necessary. The concept of free le-

7 Asri Wijayanti, "Legal Aid for Marginal Communities" 97 Man in India 251 (2017)

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gal aid makes ‘justice’ accessible to everyone, irrespective of their age, caste, creed, race, gender, ethnicity, etc.

Human Rights Aspect of Free Legal Aid

Human Rights are the basic rights of an individual inherent through birth. No State can ever infringe those rights. After the end of the Second World War, the United Nations drafted the first-ever milestone document in the history of human rights. This document was called the Universal Declaration of Human Rights. The UDHR was drafted by various representatives of the member States and was proclaimed by the UN General Assembly on December 10’ 1948 as a common standard of accomplishments for all nations⁹.

9 Hurst Hannum, “The UDHR in National and Interna-

In the Preamble of UDHR, there is no expressed provision to provide free legal aid to individuals who lack the means to access justice, however, it states that the States shall secure a mechanism which protects and safeguards the human rights of people against any kind of tyranny or oppression¹⁰. Also, under Article 6 it is expressly stated that every person has a right to recognition as a human before the law. The UDHR also provides that every person has a right to an effective remedy by a competent tribunal for the violation of human rights¹¹. These provisions are ultimately direct towards the

_____ tional Law”, 3 Health and Human Rights 144 (1998).

10 D.M. Chirwa, “State Responsibility for Human Rights” in M. Ssenyonjo and M.A. Baderin (eds.), International Human Rights Law: Six Decades after the UDHR and beyond 397-410 (Routledge, 2016)

11 Universal Declaration of Human Rights, 1948, Art. 8.



provision of the right to legal representation for all. The right to legal representation means that in case a person lacks the means to get that legal representation, it shall be the duty of the State to provide them with it to ensure equality of opportunity before the law, ultimately securing the basic objective of 'rule of law'. Moreover, the UDHR provide a base for all the member states to draft their national legislations in such a way that the objectives stated in the International Human Rights law are attained.

Further, the member states are bound by the treaties and conventions of the United Nations which they sign and ratify. These conventions which are passed according to the need and situation, have to be mandatorily followed by the parties who sign it¹². The International Covenant
 12 Alan Brudner, "The Domestic Enforcement of Interna-

on Civil and Political Rights was enforced on 23 March 1976. This Covenant ensures the necessary civil and political rights which must be available to all. Article 2(3) of the ICCPR states that if the rights recognized in this document are violated the State must ensure that it has a system of providing an effective remedy for them to those whose rights are infringed, even if the violation has been done by a person standing in an official capacity¹³.

The provision is very strong in itself as it is a direct implementation of rule of law. Here, the duty of the state to ensure a system of effective remedies in itself implies that all measures must be taken to secure the right to legal representation for each individual. Thus, free legal aid to
International Covenants on Human Rights: A Theoretical Framework
 35 University of Toronto Law Journal 219 (1985).

13 Ibid 12

those in need come in context for the implementation of this provision. The ICCPR also ensures equality before the law and effective protection against discrimination¹⁴. Thus, free legal aid becomes a mandate for the States to ensure that these goals are fulfilled. Article 14 (3) of the convention expressly states that the right to legal aid and the right to a fair trial must be provided to all even if a person has violated any law.

The right to legal aid is recognized as a basic human right for all individuals and consequently, a person with insufficient means to achieve that right has a right to 'free legal aid' at the expense of the State. If such a provision is not present in the national legislations of the member States, not only would all other rights and guarantees may lose

14 International Covenant on Civil and Political Rights, 1976.

their purpose but also, it will be actionable against the State at the international level.

Free Legal Aid Provisions under the Indian Constitution

India is a signatory member of both the UDHR and the ICCPR. Thus, it is bound to ratify the rights stated under them into its national legislation. India also follows constitutional sovereignty to ensure the rule of law. Even a government established by law cannot infringe the rights of an individual guaranteed under the Indian Constitution¹⁵.

Free legal aid is an expressed provision under the legislation of India and the State ensures that those in need of legal assistance get it, even if they lack

15 S.S. Sharma, Legal Aid to the Poor: The Law and Indian Legal System (Deep & Deep Publications, New Delhi, 1993).

the resources to afford it. Also, the State is dutifully bound to ensure legal awareness amongst the citizens¹⁶.

The Preamble of the Constitution aims at securing 'justice- social, economic and political to the citizens. It is already implied that justice can be secured only when people can access that justice, and thus, free legal aid becomes a mandate for the State¹⁷. Moreover, Article 14, the fundamental right to equality and equal protection of the law, is expressly stated in the Indian constitution which helps in the attainment of the goal of justice to all.

Article 38(1) states that the State shall promote the welfare of the public at large by se-

16 G.O. Koppell, "Legal Aid in India" 8 Journal of the Indian Law Institute 224 (1966).
17 S.K. Sarkar, "Indian Constitution and Human Rights" 1 Human Rights and Social Justice 79 (2018).

curing and protecting the social order including justice. Article 39 (A) directs the state to secure a legal system that promotes justice thereby providing the right to free legal aid for ensuring the opportunity to secure justice and that justice is not denied to anyone. The Indian law secures the right to justice to not just citizens but also foreigners¹⁸. Apart from the Constitution, Section 304 of the Code of Criminal Procedure' 1973 states that if an accused does not have sufficient means to engage a lawyer, the Court must provide a defence lawyer at the expense of the State, which in turn ensures the provision of free legal aid. Also, Order 33 of the Code of Civil Procedure provides for filing of an application as an indigent person, that is, a person who is unable to pay the prescribed fees of the Court.

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Also, over the years, the Judiciary has repeatedly affirmed the provision of free legal aid to those who cannot afford the legal expenses of a court case in various landmark judgments¹⁹. In the case of *Khatri v State of Bihar*, the apex court stated that the constitutional duty to provide legal aid starts right from the point from when an accused is produced before the Magistrate for the first time and continues whenever he/she is produced for remand²⁰. In fact, the judiciary has placed a duty upon the police to inform the nearest legal aid committee about the arrest of a person immediately after such an action is taken²¹.

Thus, free legal aid is a distinctive mechanism in the In-
 19 *Hussainara Khaton v State of Bihar* (1979 AIR 1369, 1979 SCR (3) 532)
 20 (1981) 1 SCC; 1981 SCC (Cri) 228; 1981 Cri. LJ 470
 21 *Sheela Barse v State of Maharashtra* (AIR 1983 SC 378)

dian Constitution and numerous people are benefitted through it every year to ensure that they have an equal opportunity to attain justice. Also, to further strengthen the concept and implementation of the right to legal aid, the Legal Services Authorities Act²² was enacted by the Parliament in 1987. The National Legal Services Authority was constituted under the Act to monitor and evaluate the implementation of legal aid programmes. Every State of India has a State Legal Services Authority ever since and each District and Taluk has its own Legal Services Authority²³. These authorities give effect to the policies and programs of the National Legal Services Authorities and conduct Lok Adalats for
 22 Legal Services Authorities Act' 1987 (Retrieved from: <https://www.indiacode.nic.in/>)
 23 G. Mallikarjun, "Legal Aid in India and the Judicial Contribution", 7 NALSAR Law Review 240 (2013).



peaceful resolution of disputes.

There is also a Supreme Court Legal Services Committee to administer and implement the legal services programmes concerning the Supreme Court of India.

The main function of all the legal services authorities are:

- To provide free and competent legal services to the eligible persons,

- To organize Lok Adalats²⁴, and,

- To organize legal awareness camps ensuring legal literacy in the rural areas²⁵.

Free legal services include the following:

- The Court fees, process fees and all other charges

24 A.K. Agarwal, "Role of Alternative Dispute Resolution Methods in Development of Society: 'Lok Adalats' in India" Working Paper Series of Indian Institute of Management Ahmedabad (2005).

25 Supra 23

related to any court proceedings,

- The services of the lawyers in legal proceedings,

- Supply of certified copies of orders and all other documents related to legal proceedings,

- Preparation of appeal, paper book including printing and translation costs²⁶.

However, there is also an eligibility criterion for 'free legal services' and it states the list of persons eligible for them:

- Women and children,

- Members of the SC/ST communities,

- Industrial Workmen,

- Victims of mass disasters, violence, floods, drou-

26 Andrew Higgins, "Legal Aid and Access to Justice in England and India" 26 National Law School India Review 13 (2014).

ghts, earthquakes, industrial disasters, etc.

- Disables people,
- Person in custody
- Persons with an

annual income less than Rs. 1 lakh and for the Supreme Court Legal Services Committee the limit is Rs. 5 lakh.

- Victims of Trafficking in human beings and beggars .²⁷

The provisions of the National Legal Services Authority gives an effective mechanism to deliver ‘free legal aid’ to those who are in need, provided that such need is recognized by the competent authority.

Conclusion

The above discussion highlights various aspects of free

legal aid under the International Human Rights Law and the Indian Constitution. Since India is a signatory member of the IC-CPR, the State has to ensure such a mechanism exists which provides free legal aid and appropriate legal services to the people who lack the means to afford it. The road towards justice, especially in a country as diverse and large as India is an expensive one, and with high rates of poverty, the common man can't attain justice in such cases. But, to make sure that justice is delivered irrespective of the background of an individual, the Indian law enshrines provisions of legal aid and services at various levels. Also, the judiciary realizes the need and importance of free legal services and has rightly stated that if an indigent accused is not provided with legal aid, the trial itself would be deemed unfair and such

²⁷ Ibid 26

convictions and sentences would be set aside²⁸.

The researcher thus answers all the questions which were posed in this research. The research enlists the international human rights aspect of free legal aid along with giving a full explanation of the provisions of free legal aid in India. Also, the mechanism of free legal aid is appropriately addressed by discussing the formation, constitution and functional working of the National Legal Services Authority. Free legal aid paves the path towards a fair trial before law thus, achieving the ultimate goal of 'access to justice' for all. Free legal aid services not only help in the administration of justice but also in the overall societal development of India since the State must promote 'le-

28 Suk Das v Union Territory of Arunachal Pradesh ((1986) 2 SCC 401; 1986 SCC (Cri) 166)

gal literacy' amongst the public at large. Although, India is still a developing nation and the larger goal of securing access to justice for all is still partially fulfilled. There are a lot of issues that are to be resolved to ensure that the goals stated in the Preamble of the Indian Constitution and the International Conventions are completely achieved.

Bibliography

Articles:

Andrew Higgins, "Legal Aid and Access to Justice in England and India", 26 National Law School India Review 13 (2014)

Asher Flynn, Jacqueline Hodgson, et al., "Legal Aid an Access to Legal Representation: Redefining the right to a fair trial", 40 Melbourne University Law Review 207 (2016)

Asri Wijayanti, “Legal Aid for Marginal Communities”, 97 Man in India 251 (2017)

Dolly Choudhary, “Concept of Free Legal Aid – A comparative analysis of free legal aid in India, United Kingdom and Australia”, 3 International Journal of Law and Legal Jurisprudence Studies 104 (2016)

G. Mallikarjun, “Legal Aid in India and the Judicial Contribution”, 7 NALSAR Law Review 240 (2013)

Kristel Juriloo, “Free Legal Aid – a Human Right”, 33 Nordic Journal of Human Rights 203 (2015)

Shazia Choudhary and Jonathan Herring, “A human right to legal aid? – The implications of changes to the legal aid scheme for victims of domestic abuse” 39 Journal of Social Welfare and Family Law 152 (2017)

Books:

Dr. K.L. Gupta and Dr. V.B. Mandaliya, Legal Aid and Awareness in India: Issues and Challenges (LAP Lambert Academic Publishing, New Delhi, 2018)

Francesco Francioni, Access to Justice as a Human Right (Oxford University Press, New York, 2007)

J.K. Das, Human Rights Law and Practice (PHI Learning Private Limited, New Delhi, 2016)

Raman Mittal, Legal Aid: Catalyst for Social Change (Satyam Law International, New Delhi, 2012)

S.S. Sharma, Legal Aid to the Poor: The Law and Indian Legal System (Deep & Deep Publications, New Delhi, 1993)