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Article 39A: Is Probono legal aid comeatable?

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The legal system has been a core component of society since its inception, providing people with the opportunity to protect their freedom, liberty, and right to seek justice. Modern laws frequently fail to protect those who urgently require assistance, such as the poor and underprivileged, who cannot afford such a high-priced judicial procedure. As a result, the concept of international free legal advice arose, intending to provide free guidance to all people and make the judicial system the same for all. Legal aid refers to free legal services meant to improve people's life. The objective of legal aid is egalitarianism, the effective implementation of social assistance, and the abolition of social structural discrimination against the poor. As a result, the principle of free legal advice is highlighted in this article, as are its successes and challenges. It emphasizes the tool's basic structure and several noticeable issues.

Keywords: *probono, free legal aid, justice, article 39a, egalitarian, abolition.*

INTRODUCTION

Pro bono means for the general good, and the phrase generally relates to attorneys providing legal services to those who cannot afford them. 'Pro Bono legal aid' refers to legal assistance provided to individuals who do not have good financial conditions and ensures complete help to the economically disadvantaged population. Fiscally weak individuals could locate volunteer lawyers ready to take their cases for free, thanks to pro bono programs and such Pro Bono lawyers. Pro bono lawyers serve the public interest by giving free legal services to

individuals who need legal and financial support. So, it is a moral obligation upon lawyers. Pro Bono lawyers provide poor and underprivileged clients with valuable legal advice and support for free.

Unfortunately, this laudable concept has not served up to the levels. India is not the only country with Free Legal Aid services. The instrument has proven to be a valuable resource to the target audience abroad. According to a study¹ conducted by Prof. Jeet Singh Mann of the National Law University of Delhi (NLUD), there are several reasons why individuals lack confidence in the legal aid counsel (LAC) services provided as part of the free legal aid services. Most people who qualify for the free legal assistance program consider using the services only when it is their last resort. So, the article points out the loopholes in such a praiseworthy concept that commenced to promote justice & equality and lacks its very essence.

BACKGROUND

The Indian government began addressing the issue of legal aid for the underprivileged in several conferences of law ministers and Law Commissions in 1952. The government created some regulations for legal aid programs in 1960. Kerala was the first to implement a legal aid policy for the poor, known as Kerala Legal Aid. Tamil Nadu and Maharashtra have also implemented similar schemes to provide free legal aid to the poor and underprivileged.

According to Article 14 of the Indian Constitution², everyone is entitled to equal legal protection, regardless of caste, race, gender, religion, or place of birth. Furthermore, under Article 22(1),³ no person arrested can be denied the right to consult with and be represented by a lawyer of their choosing. *Audi Alteram Partem*,⁴ which translates to "Hear the other side" or "the other side also heard," is a fundamental legal principle that governs all other legal considerations. Even though access to justice is a fundamental right, the poor continue to

¹ Jeet Mann Singh, 'People barely trust-free legal aid services in India' (*Research Gate*, May 2022) <https://www.researchgate.net/publication/360463522_People_barely_trust-free_legal_aid_services_in_India> accessed 15 July 2022

² Constitution of India, 1950, art.14

³ Constitution of India, 1950, art.22(1)

⁴ 2nd Edition, West's Encyclopedia of American Law 'Audi Altrem Partem' (The Gale Group, 2008)

suffer because they cannot afford the high cost of the legal system and have to accept injustice regularly.

The 42nd Constitution Amendment⁵ made free legal aid a statutory right in 1976 by inserting Article 39A⁶ under the Directive Principles of State Policy (DPSP), which stated that the authority must ensure equal access to justice for all and provide free legal aid to those in need so that no economic or other disability prevents anyone from seeking justice⁷. With the passing of the Legal Services Authorities Act in 1987 and the subsequent establishment of NALSA⁸, such a concept got legal recognition in 1995. Since then, it was supposed to serve as a beacon of hope for the underprivileged. However, it is stuck with significant complexities that prevent it from reaching its full potential and denying the under-privileged access to quality justice.

LEGAL FACILITIES

On the recommendations of its committees, the Central Government of India enacted the Legal Services Authorities Act⁹, Article 39-A of the Indian Constitution. In November 1995, the Legal Services Authority Act of 1987 came into force, making several changes to the Act. It provides legal aid to people economically disadvantaged, backward, or disabled. Section 12¹⁰ specifies the eligibility criteria for free legal service.

WHAT IS FREE LEGAL AID?

The Indian Constitution calls for justice and equality for all citizens. Article 21¹¹ guarantees the right to life and liberty, while Article 22(1) guarantees equal representation for all citizens to protect their rights. As a result, every citizen has the right to legal representation, and it is the government's responsibility to provide it.¹² Law clearly, mentions the eligibility of the individual eligible for legal aid. Pro Bono services include all the tasks from the commencement of the judicial process to the end judgment regarding assistance and finances.

⁵ Constitution (Forty-second Amendment) Act, 1976

⁶ Constitution of India (Forty-second Amendment) Act, 1976, art.39A

⁷ *Hussainara Khatoon v Home Secretary, State of Bihar* (1980) 1 SCC 98

⁸ National Legal Services Authority Act, 1995

⁹ Legal Service Authority Act, 1987

¹⁰ Legal Services Authority Act, 1987, s 12

¹¹ Constitution of India, 1950, art 21

¹² *Khatri and Ors. v State of Bihar & Ors.*, (1981) 1 SCC 627

A person can file for aid through the concerned authority at a particular level; the National legal services authority, State legal services authority, District legal services authority, and Taluk legal services committee. When a case comes at the appropriate authority level, the regulator carefully provides an analysis and takes appropriate action. The lawsuit can also be submitted online by visiting the NALSA's official online portal and entering the necessary initials of individuals and cases.

CURRENT SCENARIO OF THE LEGAL AID SYSTEM

NALSA¹³ was enacted in 1995 to provide equal rights and equal protection. The goal was to provide help to the poor and illiterate population. A large section of this population is in villages, and legal aid clinics are far away from the villages' borders. On the one hand, the government promises to assist the needy, while on the other hand, legal aid clinics are still a concept. Working solely on documents and outlining plans will not affect the ground. This transitory paradigm will become permanent if the operating system does not change.

1. *Pro Bono Lawyer Ratio*

India has a higher per capita lawyer ratio than most other countries, according to the Commonwealth Human Rights Initiative (CHRI). There are approximately 20 lac lawyers in India, which equates to around one lawyer for every 700 people.¹⁴ There are 61,593 panel lawyers in the country, which equates to one legal aid lawyer for every 18,609 people. This figure calls into question the concept of pro bono service, as India has a population of 1.35 billion people, and the strength of 61k Pro Bono lawyers explains the country's current crisis. According to the report, only 15 million people have benefited from legal aid services since 1995, even though more than 80 percent of the country's 1.25 billion people are eligible.

2. *Financial Constraints*

Given India's economic situation, many people live below the poverty line. India has struggled to find a way forward since independence and is still evolving. People going through a hard

¹³ *Ibid*

¹⁴ Soibam Rocky Singh, 'Most Free Legal Aid as a last-ditch option: Report' (*The Hindu*, 01 July 2019) <<https://www.thehindu.com/news/cities/Delhi/most-see-free-legal-aid-as-last-ditch-option-report/article28237300.ece>> accessed on 09 July 2022

time must not be required to pay for suits and represent themselves in the tribunal. As a result, pro bono legal services started. Due to a lack of infrastructure, lack of awareness, and a lack of interest on the part of a few lawyers, clients lost faith. People have no choice but to hire a private lawyer or give up the fight for their rights. As per Prof. Jeet Singh Mann of the National Law University of Delhi (NLUD) report,¹⁵ approximately 75% of beneficiaries stated that they chose free legal aid because they did not have the means or resources to hire a paid private practitioner. Furthermore, 22.6 percent of those who received free legal services asserted that they'd never use free legal aid again.

3. *Rural India*

The NALSA¹⁶ stipulates establishing one legal aid clinic per village or a reasonable group of villages to ensure that legal assistance is available in India's most rural areas. As per The Indian Justice Report,¹⁷ there were only 14,159 legal aid clinics in March 2020 for 597,617 villages, which means one clinic for every 42 villages. Except for Rajasthan and Gujarat, other large states that experienced reverse migration, such as Uttar Pradesh, Bihar, and Madhya Pradesh, have nearly 100 or more villages served by a single legal services clinic. Uttar Pradesh has the worst ratio, with 520 villages for every clinic, while Rajasthan has seven villages per clinic.

HOW WELL DOES IT WORK?

Given the country's current situation, it's clear that the concept of free legal aid is stuck somewhere. Multiple organizations conducted various research studies to delve deeply into the realms of the underprivileged section. Such surveys have primarily focused on the conditions of prisoners and the deterioration of female prisoners' conditions. Though several documents state that perhaps the free legal system is easily accessible and the government is obligated to inform the individual of his rights, how often does this happen? There are several cases where an individual is eligible for legal aid but doesn't obtain it. There is a lack of proper training for legal aid lawyers on their roles and responsibilities, as well as a lack of

¹⁵ *Ibid*

¹⁶ NALSA (Legal Services Clinics) Regulations, 2011

¹⁷ *Ibid*

methodologies to supervise the lawyers' output and client satisfaction. A broader concern has been ensuring the quality of services provided, which is directly related to the training, documentation, reporting, and surveillance of legal aid providers. Monitoring and mentoring committees either do not exist or do not work efficiently. The judiciary has been relentlessly ensuring the best version of pro bono services to those in need. Time and again, landmark decisions have been issued to improve the situation.

CASE LAWS¹⁸

1. *Hussainara Khatoon case*¹⁹ is a landmark judgment where men, women, and even children were imprisoned for years, awaiting their trials. The offenses charged against a number of the prisoners have been minor, or even if the suit got lodged, the punishment could be three months in prison. According to the Bihar government's reports, many prisoners were held as undertrials but were repeatedly in judicial custody. The Apex Court found all arguments unsatisfactory and ordered the release of the 17 undertrial prisoners whose names Mrs. Hingorani mentioned in her writ petition. The Supreme Court ruled that the detention of these prisoners was illegal because it violated Article 21²⁰; Right to Life and Liberty.
2. Another landmark case is *Khatri v the State of Bihar*²¹ or the Bhagalpur blinding case. It is a significant case; it was the first case in law in which the Supreme Court ordered compensation for violations of fundamental human rights. In 1980, police in Bihar blinded 31 people on trial by pouring acid into their eyes. Hingorani questioned whether the government was obligated to compensate the blinded prisoners for violating their Fundamental Rights under Article 21 of the Constitution. Judicature held that the purpose of a habeas corpus petition is to free a person from illegal detention. However, even in a habeas corpus proceeding, the tribunal has the authority to provide relief to meet the needs or to issue appropriate directions. A trial held without giving

¹⁸ Project 39A, 'Landmark Cases' (Project 39A) <<https://www.project39a.com/legal-aid-landmark-judgments#:~:text=The%20court%20held%20that%20it,needs%20of%20justice%20so%20required>> accessed on 12 July 2022

¹⁹ *Ibid*

²⁰ *Ibid*

²¹ *Khatri and Ors.* (n 12)

legal aid to a poor and needy accused at state expense is void, and the conviction gets quashed. Free legal services for the poor and needy are essential for any legal procedure. The judiciary also commended the strict enforcement of section 209 of the CrPC 1973²², which requires an arrested person to appear before a judicial magistrate within 24 hours of his arrest.

3. In the *Suk Das v Union Territory of Arunachal Pradesh case*²³, there was an appeal from a two-year prison sentence for criminal intimidation in which the accused was not represented at trial and did not apply for legal aid. Hon'ble Justice P. N. Bhagwati stated in the case of *Suk Das v Union Territory of Arunachal Pradesh* that India has many people unaware of their rights. As a result, it is necessary to increase general public legal literacy and awareness about an essential component of legal aid. It became a landmark case not because of the judgment but because of the concern expressed to the courts about the urgent need for free legal aid awareness.

WAY FORWARD

As per all of the reports and incidents, it is clear that the current state of the Pro Bono system is inadequate. Despite the strength of the Indian legal system, the situation has deteriorated over time at the execution level. India has a large population, and many citizens are eligible for free legal aid, which is a boon to the country, but the picture is the flip side. Even the accused in the Mumbai terror attack, *Ajmal Kasab*²⁴ received legal aid in India. The court asserted that the right to legal service arises when a person arrested for an offense appears before a magistrate. The magistrate makes the accused fully aware of this right, and failure to do so may subject the magistrate to departmental proceedings. Even though being accused of a terror attack, he got legal assistance.

WOMEN PRISONERS

The conditions of prisoners in India are appalling; jails are overcrowded, and prisoners are suffering because they are unaware of their rights and do not have the financial means to hire

²² Code of Criminal Procedure, 1973, s 209

²³ *Suk Das v Union Territory of Arunachal Pradesh* (1986) 2 SCC 401

²⁴ *Mohammed Ajmal Mohammed Amir Kasab and Ors. v State of Maharashtra* (2012) 9 SCC 1

a lawyer. In India, three out of every four prisoners are undertrials, meaning they are either on trial or awaiting trial. These figures are from official data released by the country's National Crime Records Bureau in its Prison Statistics India report for 2020²⁵. Meanwhile, the average district jail has a 136 % occupancy rate. As per the numbers, more than 70% of undertrial prisoners come from the marginalized class. Living in the overcrowded dizzy lockup makes the state of affairs for the ladies and children even worse. Atrocities toward women prisoners are in front of society. Tortures can descend to inhuman levels, as in the case of *Sheela Barse*²⁶, wherein a lawsuit is in reaction to custodial violence towards woman prisoners in Bombay. The court issued orders requiring all prisoners in Maharashtra jails to represent with the aid of using legal counsel. It emphasized the significance of safeguarding prisoners` rights towards torture and ill-treatment, specifically when their judicial custody can prevent them from access to legal counsel.

The court ordered Maharashtra prisons to send a list of all undertrial prisoners to the district's Legal Aid Committee and to facilitate interactions between lawyers nominated by these Legal Aid Committees and prisoners seeking legal aid to ensure that prisoners have access to legal services. It was not the first-time atrocities committed against prisoners had made headlines. Many other female prisoners have children or are pregnant, making the situation even more difficult. Nobody is concerned about their nutrition, hygiene, or education. Menstruating women have adequate access to medical care, sanitary napkins, and medications. There are many issues for such marginalized people which we need to address, raising serious concerns about the police department's failure to provide legal services.

EXHORTATION

1. *Infrastructure*

It is necessary to ensure that spending on the legal aid system's structure is increased and improved in response to current conditions and demands to address potential barriers. Lawyers who participate in Pro Bono work may get rewarded more generously.

²⁵ Murali Krishnan, 'Why are India's jails so crowded?' (*DW*, 09 March 2022) <<https://www.dw.com/en/why-are-indias-jails-so-overcrowded/a-61063696>> accessed 12 July 2022

²⁶ *Sheela Barse v State of Maharashtra* (1983) 2 SCC 96

2. *Gauge Mechanism*

There should be some mechanism to monitor how lawyers work and record the feedback from applicants for legal services for future action. It might be able to figure out how to make legal aid counsel more accountable and efficient.

3. *Awareness*

A structure without a base will always be flimsy, regardless of how much money to invest. So, no matter how efficient and advanced the Pro Bono system is, if the target group is uninformed of their rights and remedies, the system will indeed be blind. More than a typical endeavor is required to improve societal literacy and awareness. Legal aid clinics, institutions, and non-governmental organizations (NGOs) must shoulder responsibility. The government has brought in programs offering free legal aid and an online portal for the needy, but it must reach the intended target.

CONCLUSION

It's better to get back on track now than later and before other lives become living carcasses behind the facade of jails across which no voice can come, and free legal aid becomes a mere concept. Regulations for people on trial and awaiting trials should be differentiated, and some other source channels should come to help improve the system's functioning. A legal aid clinic can be impaneled within the police and magistrate's chain of command, making it mandatory for the state to assign legal counsel to the needy. Regular checks on the establishment of legal aid clinics in rural areas, and all law schools should submit a report on the functionality of their legal aid clinics, as proposed by NALSA.

The various institutions involved in this legal aid program should be deeply committed to the betterment and greater good of these marginalized and poor people. It will become a moral imperative rather than a commitment over time, resulting in such carelessness and reluctance on the part of lawyers. The concept appears to fall in line with the larger vision of promoting all to an equal pedestal and providing justice to all, regardless of caste, class, or gender. However, even today, if authorities take due care of the system's emergence, it is feasible to have a very

robust system. So, now is the moment to create a proactive change and make this notion a breakthrough in the Indian legal system.