



# Right To Free Legal Aid In India: A Study Of Constitutional, Statutory, And Judicial Developments

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## Abstract:

The concept of Free Legal Aid serves as the foundation of a refined justice system, ensuring that the doors of justice are not closed to anyone due to economic or social disabilities. This paper examines the comprehensive evolution of the right to legal aid in India, tracing its route through constitutional mandates, legislative frameworks, and judicial activism. The Right to free legal aid gain formal recognition through the 42<sup>nd</sup> Amendment Act, 1976 which inserted Article 39A, directing the State to provide free legal services. However, the true transformation occurred through the transformative interpretation of Article 21 by the Supreme Court, elevating legal aid from a directive principle to fundamental rights. The study further analyzes the statutory strength provided by the Legal Services Authorities Act, 1987, which established a three-tier structure (NALSA, SLSA, and DLSA) and institutionalized Lok Adalats as a mechanism for affordable dispute resolution. By analyzing landmark judicial pronouncements such as *Hussainara Khatoon v. Home Secretary, State of Bihar* and *M.H. Hoskot v. State of Maharashtra*, this paper highlights how the judiciary has bridged the gap between theoretical rights and practical accessibility.

**Key Words:** Article 21, Article 39A, Constitutional Law, Directive Principles of State Policy, Equal Justice, Free Legal Aid, Judicial Activism, Legal Services Authorities Act, 1987, Lok Adalats, NALSA, Public Interest Litigation (PIL), Social Justice.

**“Society is guilty if anyone suffers unjustly.”**

**Justice V.R.Krishna Iyer.**

## 1. INTRODUCTION

There is a need for legal aid to run democracy safely through the rule of law and equal protection of law. And today, laws cover the entire life of people and are very complex and technical, so the importance and need of legal aid has become more evident. There should be prosperity and peace in the society. The law must not only administer justice but also administer fair treatment, and this can only happen through the arteries of the legal system.<sup>1</sup> The Constitution of India aims at establishing an egalitarian society with social justice. This written Constitution is the lengthiest in the world and has not only incorporated the objectives of the Constitution but

<sup>1</sup> Francis Regan, *The Transformation of Legal Aid: Comparative and Historical Studies* 89-90 (Oxford University Press, 1990).

also the manner in which the country would be governed to achieve the objectives.<sup>2</sup> The concept of legal aid has its roots in this very provision of the Constitution. So long as socio-economic and other forms of inequality exists, the implementation of National Charter becomes impossible, until we evolve a process of administration of justice where economic difference is not a factor for getting justice.<sup>3</sup> The Constitution of India guarantees Justice – social, economic and political to each citizen as enshrined in the Preamble. In fact mere assurance of political justice is of no substance if the citizens are denied their social and economic rights. Similarly, mere social justice is meaningless in the absence of just distribution of economic resources along with equitable access to the opportunities.<sup>4</sup> Under the Indian Constitution, there is no express provision of legal aid as a fundamental right, but there are many instructions in our Constitution directly or indirectly regarding legal aid.

The Constitution of India is based on the rule of law. The Constitution gives every person the right to life and personal liberty, this should not be ignored. The case gets spoiled if legal aid is not available.<sup>5</sup> Apart from the provisions under Indian Constitution some specific Legislations have been enacted such as Legal Services Authorities Act,1987. Although the current Legal Services Authorities Act was drafted in 1987, it was not put into effect until 1995. Millions of impoverished people nationwide are receiving legal aid from state and district administrations. Nevertheless, another section of the law requires the establishment of Lok Adalats and the resolution of legal disputes outside of court. The Indian judiciary has played a transformative role in evolving free legal aid from a mere "charitable" act into a mandatory constitutional right. While the Constitution initially placed legal aid under the Directive Principles (Article 39A), it was the Supreme Court's creative interpretation that elevated it to a Fundamental Right under Article 21. The right to life under Article 21 of the Constitution has evolved after the landmark judgment in *Maneka Gandhi vs. Union of India*.<sup>6</sup> The Supreme Court discussed the relationship between Article 21 and the right to free legal aid in detail in its judgment in *Hussainara Khatoon v. State of Bihar*, where the court was shocked by the plight of thousands of under trial prisoners. He remained lodged in the jails of Bihar for years, without the representation of any lawyer.<sup>7</sup>

## 2. CONSTITUTIONAL PROVISIONS RELATED TO LEGAL AID IN INDIA

The Constitution of India is known as the fundamental law of the land from which all other laws derive their sanctity or legitimacy. Therefore, Constitution is a living and growing law which means it is able to handle with the newer situations and development. That is why, as and when it is felt that a special situation has arisen and the present constitutional provisions are not adequate to meet up that situation and cannot deal with the new development effectively, then the parliament amends it from time to time, and legal aid is such one provision which was incorporated in the Constitution by the 42nd Amendment in the year 1976.<sup>8</sup> The Constitution of India does not provide for any express provision with regard to legal aid as a fundamental right, but there are many directions in our Constitution directly or indirectly regarding legal aid.

<sup>2</sup> Stuti Deka, *Constitutionalism and Constitution of India* 125 (Capital Publishing Company, Guwahati, 1st edn., 2009).

<sup>3</sup> Sarfaraj Ahmed Khan, *Lok Adalat: An Effective Alternative Dispute Resolution Mechanism* 14 (APH, New Delhi, 2006).

<sup>4</sup> Y.K. Sabharwal, "Role of Law and Legal Institutions in the Alleviation of Poverty and Deprivation" (Inaugural address at the Golden Jubilee Regional Seminar of the Indian Law Institute, Cuttack, 9 September 2006), available at: <http://www.supremecourtofindia.nic.in> (last visited on 09-07-2025).

<sup>5</sup> Indira Gandhi v. Raj Narain, 1975 AIR 1590: (1975) 2 SCC 159.

<sup>6</sup> (1978) 1 SCC 248 : (1978) 2 SCR 621 : AIR 1978 SC 597

<sup>7</sup> (1980) 1 SCC 89 : AIR 1979 SC 1369.

<sup>8</sup> S.C. Shastri, *Environmental Law* 39 (Eastern Book Company, Lucknow, 2nd edn., 2005).

## 2.1 Preamble and the Free Legal Aid

The Preamble to an Act sets out the main objectives which the legislatures intended to achieve.<sup>9</sup> It is a sort of introduction to the statute and in many times is very helpful to understand the policy and legislative intent. It expresses “What we had thought or dreamt for so long”.<sup>10</sup> The Constitution of course is the light-house for all the navigators and its interpretation must conform to its aims and objectives. Law is made for man, for the society and for the advancement towards those fundamental goals which are vocatively expressed in the Preamble by the words “We the people of India, it is vividly expressed that all the provisions in the Constitution reflect the ideals and aspirations of the people of India.” Law of course, is not static, backward looking or a tradition bond.<sup>11</sup>

## 2.2 Fundamental Rights and the Free Legal Aid

The doctrine of philosophy of equal justice becomes apparent on the plain perusal of the Preamble of the Constitution. Justice is not only in court of law but is envisaged as justice in social, economic and political. Article 14, 19, 21, 22, 32, 38, 39-A, and 226 of the Indian Constitution contain constitutional provisions that reinforce the Preamble's pledges. The Constitution guarantees everyone equal access to justice, and justice in true sense can be achieved only by realizing it for the poor and needy sections of the society.<sup>12</sup> “Equality before the law,” is English in origin, and the second quotation comes from the American Constitution. Both of these statements, as correctly noted by Dr.J.N.Pandey, seek to achieve what the Constitution's preamble refers to as “equality of status.”<sup>13</sup> Art. 14 ensure that all people are entitled to same level of legal protection. In light of this, one could argue that the administration of justice on an equal footing is our Constitution's underlying principle.

Another crucial factor may also contribute to the required for legal aid. Without a system of justice administration that the most vulnerable can access, no democracy can last. It wouldn't be asking too much to say that providing access to the justice system for even the lowliest of its citizens is essential to the existence of a free government.<sup>14</sup> The idea that the poor have a legal right to exercise it is false because they cannot do so without money, and this is what causes the poor to suffer and go through hardship. According to the idea of equal justice, the poor should have the same legal rights as their wealthier neighbors, as well as the same power to enforce those rights. Equal justice requires a fundamental shift in the mindsets of legislators, lawyers, and the general public to ensure that the poor are not discriminated against on the basis of their socioeconomic status or because of their race or gender.<sup>15</sup> This means that Article 14 needs to be interpreted in a progressive and risky way if we are to move from legal equality to social equality.<sup>16</sup> Article 21 is another key provision that has greatly strengthened and supported legal aid. Life, individual liberty, and “legal procedure” have all been widened in scope. The third phrase, however, is the most related our current needs. This idiom now signifies totally the reverse of what it did at its inception as a result of the most extensive usage of the judicial review engine in this area. **Gopalan vs. the State of Madras**,<sup>17</sup> The court held that the term “law” had been used to refer to something that embodied the idea of natural justice. As a result, when this article referred to a procedure established by law, it meant the procedure that is outlined state law. If this circumstance was fulfilled, action would be lawful according to Article 21, and it would not be necessary to interpret the phrase in light of the interpretation that has been given to the phrase due process of law in the American Constitution, which is related to the provision of legal assistance. This interpretation of the procedure states that it is the procedure established by law, which indicates that it may be modified by the legislature by means of the

<sup>9</sup> *I.C. Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

<sup>10</sup> *X, Constituent Assembly Debates* 417.

<sup>11</sup> M.G. Chitkar and P.L. Mehta, *Lok Adalat and the Poor* 104, available at: [shodhganga.inflibnet.ac.in](http://shodhganga.inflibnet.ac.in) (last visited on May 25, 2025).

<sup>12</sup> Archana Mishra, “Challenges in Legal Aid Movement in India” in *Legal Aid Catalyst for Social Change* [Page Number] (Legal Aid Society, Campus Law Centre, University of Delhi, Delhi).

<sup>13</sup> S. Chander, *Fundamental Rights and Directive Principles* 15 (Deep & Deep Publications, New Delhi, 1992).

<sup>14</sup> Planning Commission, Government of India, *Encyclopedia of Social Work in India* 470 (Publications Division, New Delhi, 1968).

<sup>15</sup> Arthur J. Goldberg, *Equal Justice for the Rich and the Poor* 27 (Relevant Publisher, Place of Publication, 1964).

<sup>16</sup> *Bidi Supply Co. v. Union of India*, (1956) SCR 267.

<sup>17</sup> (1950) SCR 88

introduction of new legislation. The right guaranteed by Art. 22 is roughly equivalent to the concept of “Due Process of Law” as it is described in the U.S. Constitution. The development of Article 22(1) as it currently stands in the Constitution is also fascinating. The Bill that was drafted by the committee did not include a “right to counsel” provision. During debates in front of the Constituent Assembly, Article 15 of the Draft Bill—which was essentially a hybrid of the current Articles 14 and 21—was subject to some modification.<sup>18</sup>

The absence of the phrase “due process of law” from the original clause caused great deal of outrage among the members of the Constituent Assembly, and Dr. Ambedkar introduced a new Article 15A in response. On September 15, 1949, subclause (1) only stated that a person had the “right to consult a legal practitioner of his choice.” A heated debate followed on the rest of the sub-clauses of the new draft Article 15A. Only one member Mr. Thakurdas Bhargava had something to say on the right counsel and suggested that an accused person should not only have the right to consult but also be defended by counsel. An amendment was moved to this effect and Dr. Ambedkar accepted that amendment.<sup>19</sup> When someone is arrested, they have the right to speak with a counsel of their choosing and to have a productive conversation with the lawyer away from the earshot of the authorities. Any inmate is entitled to the right, regardless of whether it is granted by a particular statute or general law.

The right to counsel and to be represented by a lawyer of one's choosing extends beyond the preliminary hearing and applies to any prosecution before the court or in a tribunal for the prosecution of any crime, regardless of whether the crime carries the death penalty, the possibility of imprisonment, or other penalties. The right to be represented covers both defenses against being charged and against being arrested. A person who has been arrested but has been released on bail does not automatically lose his entitlement under this Article. The situation became more fluid after Article 21 and the 42nd Amendment went into effect, which required the government to provide legal aid.

The Court in **A.K. Roy v. UoI**,<sup>20</sup> according to a firm interpretation of Articles 22(4) and (5) of Indian Constitution, before the advisory board, a person arrested under the National Security Act of 1980 is not entitled to legal representation. The rejection of representation cannot be viewed as irrational, unfair, or unjust, according to this opinion. However, if the detention authority or the formed advisory board names a legal adviser on their behalf, the detainee must also be permitted to name a legal representation to fight his case. A non-governmental organization brought the issue of sex trafficking and prostitution before the court in **Apne Aap Women World Trust v. The State of Bihar & Othr.**<sup>21</sup> The court ruled that sex trafficking in women and children is the worst form of violence against humanity and that it is urgent to educate the public about these crimes as well as others against women and girls, such as prostitution and eve teasing. The Court also decided that help may be taken from para-legal volunteers for educating the masses and during the investigation of the matter, the victim must be allowed to utilize the assistance of both criminal attorneys and paralegal volunteers/legal retainer lawyers to avoid harassment to them. Article 32 provides the right to constitutional remedies, or the capacity to set the wheels of reality and movement in motion for the fundamental rights, in addition to guaranteeing that Indians have their fundamental rights. In addition to Article 32, Chapter 5 of the Constitution, which deals with the High Courts, also contains Article 226 to accomplish the same goal using the High Courts as a vehicle. These two foundational Articles of the Indian Constitution are intertwined because they share a common goal: to protect the rights of all citizens of India, irrespective of their socioeconomic status, caste, religion, or gender.

The connection between these Instrumental Articles and legal aids is evident when considering the fact that these rights include the benefit of legal assistance for the poor and deprived sons of India. The bond deepened when our country's progressive judiciary acknowledged the critical role that social organizations and civic-minded individuals play in advocating for India's poorest citizens. Through Public Interest Litigation (PIL), or what Dr. Baxi more accurately calls Social Action Litigation, the courts found a solution (SAL).<sup>22</sup> (a) Public interest litigation: The PIL is destined to advance and uphold the public interest, which requires that violations

<sup>18</sup> V. Shivrao, The Framing of India's Constitution, 236( N.M. Tripathi Pvt. Ltd, Bombay 1968) .

<sup>19</sup> IX Constituent Assembly Debate, 1498.

<sup>20</sup> AIR 1982 SC 710

<sup>21</sup> (2014) Pat H.C 234

<sup>22</sup> U. Baxi, Taking suffering seriously: Social Action Litigation in the Supreme Court of India, The Review, Dec. 1982.

of a large number of people's legal or constitutional rights who are underprivileged, illiterate, or in a position of social or economic disadvantage not go unnoticed and unaddressed. That would be counter to the public interest in a democratic society, which includes respect for the Rule of Law.<sup>23</sup>

### 2.3 Directive Principles and Free Legal Aid under Constitution of India

The Directive Principles of State Policy (DPSP) are enshrined in Part IV (Articles 36 to 51) of the Constitution of India. Borrowed from the Irish Constitution, these principles serve as a "roadmap" or "instrument of instructions" for the Government of India. The Supreme Court liberalized „access to justice“ in view of the clear mandate under Article 38 of the Constitution. Article 38 imposes a duty on the State, which obviously includes the judiciary, to usher in a social order in which justice-social, economic and political, must inform all institutions of national life. So by widening the „access to justice“, the Court is discharging its Constitutional duty to promote a just social order. Article 38 needs to be read along with Article. 14. This directive reaffirms what has been declared in the Preamble of the Constitution, viz., the function of the Republic State is to secure, *inter alia*, social, economic and political justice.<sup>24</sup>

Article 38 envisages not only legal justice but socio-economic justice as well. The Supreme Court has explained the idea of social justice as follows.<sup>25</sup> "The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. The concept of „social justice“ which the Constitution of India engrafted consists of diverse principles essential for the orderly growth and development of personality of every citizen. „Social Justice“ is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society."

Article 39-A is added by the Constitution (42nd Amendment) Act, 1976 to ensure equal justice which has been promised to all citizens by the Preamble and to further guarantee equality before law enshrined in Article 14, which would have no meaning to the poor so long as they are unable to pay for their legal admission.<sup>26</sup> The impact of Article 39-A read with Article 21 has been to reinforce the right of a person to legal aid involved in a criminal proceeding. The provision has been thus used to interpret (and even expand) the right conferred by Section 304 of the Code of Criminal Procedure 1973.<sup>27</sup> Article 39-A puts stress upon legal justice. Put simply, the directive requires the state to provide free legal aid to deserving people so that justice is not denied to any one merely because of economic disability. Article 39-A has been read with Article 21 and, thus, free legal assistance at state cost has been raised to the status of a Fundamental Right of a person accused of an offence which may involve jeopardy to his life or personal liberty. The Court has also ruled that it would make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused person to ask for free legal aid. Accordingly, the Presiding Judge has been obligated to inform the accused that he can obtain free legal service at the cost of the state if he is unable to engage a lawyer because of his indigence.<sup>28</sup> The Supreme Court has ruled that it cannot issue a writ of mandamus to enforce Article 39-A. Article 39-A makes it clear that the social objective of equal justice and free legal aid has to be implemented by suitable legislation or by formulating schemes for free legal aid.<sup>29</sup>

<sup>23</sup>P.N.Bhagwati, *Law as instrument of Change*, Society for Community Organisation Trust, 79 Madurai, 1985.

<sup>24</sup>Air India Statutory Corporation vs. United Labour Union And Others, AIR 1997 SC 645: (1997) 9 SCC 377.

<sup>25</sup>Ibid.

<sup>26</sup>D.D. Basu, *Constitution of India* 13 (Prentice Hall of India Pvt. Ltd., New Delhi, 1991).

<sup>27</sup>P.M. Bakshi, *The Constitution of India* 87 (Universal Law Publishing Co., Delhi, 9th edn., 2009).

<sup>28</sup>Suk Das vs. Union Territory of Arunachal Pradesh, AIR 1986 SC 991: (1986) 2 SCC 401.

<sup>29</sup>Ranjan Dwivedi vs. Union of India, AIR 1983 S.C. 224: (1983)3 SCC 307.

## 2.4 Provisions of Legal Aid Under Various Lists of the Constitution of India

Adopting the methods followed by the Government of India Act 1935, the Constitution of India divides the powers between the Union and the States in three Lists-

- i. The Union List
- ii. The State List and
- iii. The Concurrent List

To promote legal aid, the major change brought was taking away Administration of Justice from the State List to Concurrent List. In Concurrent List item number 11-A was incorporated. The objective of this incorporation was to enable both the Union and State Government to work together for the weaker sections of the society and to provide legal aid for them. This item became relevant to be explored and explained when legal aid explicitly was not included in the Constitution of India. But to find out legal aid even without any mention, the Expert Committee report underscored the provisions of the Seventh Schedule to remind the duty of the governments. The report observed on the item Administration of Justice – “The view that legal aid falls within the legislative entry relating to Administration of Justice appears to be based on over-emphasis of the last aspect at the cost of the first two. What the entry Administration of Justice connotes is the apparatus and machinery for the enforcement of legal rights and liabilities. Justice, as the pithy saying goes, is giving every man his due. But Administration of justice is concerned mainly with the nuts and bolts that put into motion – Justice in the dynamic. Even the entries legal process is not totally covered by the Administration of Justice. The agency (courts), the men (officers of courts), the mode (procedure in rent and revenue courts) and money 105 (court fees) required for discharging this function of the state which is enumerated in the relevant entry ,though illustrative and not exhaustive bring out this aspect namely, that the entry mainly deals with enforcement.” <sup>30</sup>

### 3. SPECIFIC LEGISLATION WITH REGARD TO FREE LEGAL AID: THE LEGAL SERVICES AUTHORITIES ACT, 1987

The Government and the Parliamentarians of the country also realized that the failure of law and justice for the common man, particularly, the economically disadvantaged persons is basically due to the indifferent attitude of the privileged class persons who have an upper hand in the adversarial process of litigation and afford to engage competent counsels.<sup>31</sup>

In order to ensure equality between the poor and rich litigant, Article 39-A of the Constitution of India imposes duty on the state to secure the operation of legal system and to promote justice on the basis of equal opportunity. In particular, Art. 39A defines for providing free legal aid by suitable legislation or schemes. Though the directive principles are not enforceable in any court, it is the duty of the state to apply the principles in making law. Thus, for the fulfillment of constitutional obligations as well as to implement the provisions of International Convention on Civil and Political Rights, the Parliament of India passed the Legal Services Authorities Act in 1987 (hereinafter referred to as ‘the Act’).

The aim and objects of the Act is to provide free and competent legal services to the weaker sections of the society and to make it sure that opportunities for securing justice shall not to be denied to any citizen solely due to financial or other limitations . The Act also directs the state Government and the concerned authority to organize LokAdalats as an alternative mode of justice delivery system to secure that the operation of the legal system only to promote justice in all segments on the basis of equal opportunity.<sup>32</sup>

Sec. 12 of the Act is truly a welcome development in the field of legal aid and gives a different strategic statutory status to legal aid. In order to reach out to the common people, National Legal Services Authority (hereinafter referred as NALSA) established under Sec. 3 of the Act has come up with a mission to set up legal aid clinic in all villages, police station, court, educational institution as well as render services to mentally ill person and to disaster victim etc. To implement the provisions of Sec. 12 of the Act, NALSA has been

<sup>30</sup> Sujan Singh, *Legal Aid Human Right to Equality* 145-146 (Deep and Deep Publications, New Delhi, 1998).

<sup>31</sup> Article 39-A was inserted by the Constitution 42nd (Amendment) Act, 1976. This came into force w.e.f. January 3, 1977.

<sup>32</sup> The Legal Services Authorities Act, 1987, Objective Claus

providing different facilities by introducing different schemes and regulations since its establishment to assist and empower the people who face barriers to access to justice.

As may be observed, the Act calls for the creation of institutional mechanisms and their framework for monitoring, responding to, and enforcing the free legal aid facilities. The three hierarchical legal services authorities and three legal services committees are created by the act in order to facilitate the service of legal aid and for holding LokAdalat from the Apex Court at central level to the Sub-divisional Court at lowest level. NALSA<sup>33</sup> at central level is established as the apex body and under the direct supervision of this authority two other bodies are constituted which are termed as Supreme Court Legal Services Committee<sup>34</sup> and the State Legal Services Authority<sup>35</sup> (hereinafter referred as SLSA). In every state there are two other bodies namely High Court Legal Services Committee<sup>36</sup> and District Legal Services Authority<sup>37</sup> (hereinafter referred as DLSA) and they are obliged to perform their functions under the guidelines and supervision of SLSA. The Taluk or Sub-Divisional Legal Services Committee is constituted to work at grass root level under the direct control and the supervision of DLSA, and subject to total control of the SLSA.

#### 4. JUDICIAL DISCOURSE

The judiciary has responded fantastically in interpreting the right to legal aid in accordance with the right to life, much as the justification for providing it has changed from being primarily a charitable, non-enforceable obligation to one that is provided at the State's expense.

##### **State of Haryana v. Darshana Devi<sup>38</sup>**

Facts: "The defendant is demanding compensation from the Haryana State Transport Bus for the murder of her husband. The High Court held that the exemption provision of CPC Order XXXIII would be applicable to the Accident Claims Tribunal (having the provisions of Civil Court)." Decision: "The SLLP was rejected by the court and said that the state should make rules to get rid of court expenses in compensation cases where automobile accidents are the cause. The court held that it was a public duty of the State to make rules to implement the provisions of the CPC providing legal aid to the poor."

##### **Indira Gandhi v. Raj Narayan<sup>39</sup>**

Facts: "In the general parliamentary elections held in 1971, the appellant defeated Shri Ram Narayan, his nearest rival. The United Socialist Party filed an election petition against Shri Ram Narayan challenging the election of the successful candidate under Section 80 r/w Section 100 of the Representation of the People Act, 1951. An experienced judge of the Allahabad High Court upheld the challenge on two grounds. And other grounds were rejected. The learned judge also gave a complete adjournment of two weeks. The Appellant challenged the High Court's decision against him in the Supreme Court." Decision: "The Court clearly stated: "The rule of law is the basic structure of the Constitution of India." The Constitution gives rights to every person. No one condemns the unheard. Everyone should get justice. One should go to court for remedies only when fundamental rights and privileges are violated. Also, lack of legal aid spoils the case when it is first presented before the magistrate."

<sup>33</sup> Ibid, Section 3

<sup>34</sup> Ibid, Section 3-A.

<sup>35</sup> Ibid, Section 6.

<sup>36</sup> Ibid, Section 8-A.

<sup>37</sup> Ibid, Section 9.

<sup>38</sup> AIR 1972 SC 855

<sup>39</sup> AIR 1977 SC 69

## M. H. Hoskot v. State of Maharashtra<sup>40</sup>

Facts: “The Sessions Court convicted the petitioner for the offense under IPC. His appeal was rejected by the High Court. The petitioner served the entire sentence and filed an SLP for condonation of delay, stating that he had not received a certified copy of the judgment from the jail authorities. The prison authority lost the right to appeal, as it was never granted.” Decision: “Where a prisoner sentenced to imprisonment is, in the absence of legal aid, virtually incapable of exercising his constitutional and statutory right of appeal, including by special leave, to the Supreme Court, the Court is vested with this provision, which read with Articles 21 and 39-A Read is under Article 142. The Constitution has the right to appoint a lawyer to provide complete justice to such an imprisoned person. The state was to provide free legal services to nine indigent and disabled prisoners seeking justice.”

## Hussainara Khatoon and others v. Home Secretary, State of Bihar, Patana<sup>41</sup>

Facts: “This petition was a result of an alarmingly large number of men and women; children being put behind bars for years awaiting trial in courts of law. It was brought to the notice of the Supreme Court that most of the undertrials have already undergone punishment much more than what they would have got, had they been convicted without any delay. The people being caught were charged with trivial offenses, which even if proven, would not warrant punishment for more than a few months, perhaps a year or two, and yet they remained in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial has commenced.” Decision: “Immediate release of these undertrials was ordered as many of them were kept in jail without trial or even without a charge. The court said that the State cannot be allowed to deprive the accused of their constitutional right to a speedy trial on the ground that the State does not have sufficient funds to incur the necessary expenditure for improving the administrative and judicial machinery.”

## Khatri and Others v. State of Bihar and Others<sup>42</sup>

Facts: “Several petitions were filed under Article 32 for the enforcement of fundamental rights under Article 21 on the allegation that they were blinded by the police while they were in its custody. The question arose as to whether the Court could order the production of certain reports submitted by the CID to the State government and some correspondence between the government and certain officials.” Decision: “The Supreme Court emphasized that state governments cannot escape the constitutional responsibility of providing free legal aid to indigent accused, whether incapable of doing so due to administrative or financial reasons. A trial conducted without providing legal aid at government expense to an indigent accused would be vitiated and the conviction would be quashed. Providing free legal services to the poor and needy is essential in any fair, impartial and appropriate process. Provision of legal aid is essential to ensure access to courts. The petitioner can also seek free legal aid at the appellate stage. The Court held that the right of an indigent accused to free legal aid would be illusory unless the trial judge informed him of this right.”

## Sheela Barse v. State of Maharashtra<sup>43</sup>

Facts: “Sheila Barse, a journalist and representative of prisoners' rights, told the Supreme Court that five of the 15 female prisoners in the Bombay Central Jail had been assaulted in the police lockup. The court accepted the writ petition. The College of Social Work gave a detailed report, which acknowledged that atrocities against women were taking place and that the necessary systems were not in place to provide legal aid to prisoners.”

Decision: “Failure to provide legal assistance to poor and impoverished persons violates constitutional guarantees. Article 39-A [Directive Principle of State Policy] casts a duty on the State to secure the operation of a legal system that promotes justice based on equal opportunity. The right to legal aid is also a fundamental right under articles 14 [Equality before Law] and 21 [Right to Life and Personal Liberty].

<sup>40</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597.

<sup>41</sup> AIR 1979 SC 1369

<sup>42</sup> (1981) 1 SCC 627

<sup>43</sup> AIR 1983 SC 378

## Directions:

1. Female suspects must be kept in separate lock-ups under the supervision of female constables.
2. Interrogation of females must be carried out in the presence of female policepersons.
3. A person arrested without a warrant must be immediately informed about the grounds of arrest and the right to obtain bail.
4. As soon as an arrest is made, the police should obtain from the arrested person, the name of a relative or friend whom she would like to be informed about the arrest. The relative or friend must then be informed by the police.
5. The police must inform the nearest Legal Aid Committee as soon as an arrest is made and the person is taken to the lock-up.
6. The Legal Aid Committee should take immediate steps to provide legal assistance to the arrested person at State cost, provided such person is willing to accept legal assistance.
7. The magistrate before whom an arrested person is produced shall inquire from the arrested person whether she has any complaints against torture and maltreatment in police custody. The magistrate shall also inform such person of her/his right to be medically examined.”

#### **Suk Das v. Union Territory of Arunachal Pradesh<sup>44</sup>**

Facts: “The appellant has been charged for allegedly having threatened an assistant engineer of CPWD for canceling his transfer orders. The appellant remains unrepresented by a lawyer on account of poverty, as a result of which there was no cross-examination of the prosecution witnesses. The appellant preferred an appeal in the High Court, which was vitiating. But the HC upheld the conviction.” Decision: “The Supreme Court set aside the conviction against the appellant and also quashed the order of dismissal of the appellant by the Additional Deputy Commissioner. The Supreme Court upheld the right of free legal assistance to the accused as the fundamental right of the accused under Article 21 of the Constitution. The Supreme Court stated that it would be a mockery of free legal aid if it were left to the poor ignorant to ask for free legal aid. And in that case, it would merely become a paper promise, and its purpose would fail. An accused being unrepresented in the court proceedings is totally in violation of his fundamental rights.”

#### **Ajmal Kasab v. State of Maharashtra<sup>45</sup>**

Facts: “Some of the major charges against him were: conspiracy to wage war against the Government of India; collecting arms to wage war against the Government of India; waging and abetting the waging of war against the Government of India; commission of terrorist acts; criminal conspiracy to commit murder; criminal conspiracy, common intention and abetment to commit murder; murdering several persons; attempt to murder with common intention; criminal conspiracy and abetment; abduction for murder; robbery/dacoity with an attempt to cause death or grievous hurt; and causing explosions punishable under the Explosive Substance Act, 1908.” Decision: “It has been held that a Magistrate should produce for the first time a person accused of committing a cognizable offence. This should make him fully aware that he has the right to consult a legal practitioner and be defended if he does not have the money to hire his preferred lawyer. Unless the accused clearly and categorically refuses such facility, the absolute obligation of the Court is to provide legal aid to the accused. The court also ordered all the magistrates of the country to honestly perform the above duties and responsibilities. The Court also made it clear that any failure to fully perform the duty would amount to negligence and the Magistrate concerned would be held liable for departmental proceedings.”

<sup>44</sup> (1986) 2 SCC 401

<sup>45</sup> (2012) 9 SCC 1]

### Mohd. Hussain @ Julfikar Ali v. The State (Govt. of NCT) Delhi<sup>46</sup>

Facts: "The petitioner is an illiterate foreign national and is unable to engage a counsel to defend himself. He is tried, convicted, and sentenced to death by the Additional Sessions Judge, Delhi, but without being represented. This was also upheld by the High Court." Decision: "In this case, the accused was denied legal assistance at the time of trial. The courts must ensure that the accused is dealt with justly and fairly by keeping in view the principles of the criminal justice system. The involved herein is of such a nature that the denial of such right amounts to the denial of due process of law. The absence of a proper and fair trial is a violation of fundamental principles of judicial procedure."

### Suhas Chakma v. Union of India<sup>47</sup>

Facts: A Writ Petition was filed highlighting the plight of prisoners who remain in jail because they lack access to legal counsel to apply for bail or appeal their convictions. It specifically addressed the gap between the "paper promise" of legal aid and its actual availability in prisons. Decision: The Supreme Court reiterated that free legal aid is an **inalienable right** under Article 21. The Court issued a "Charter of Prisoners' Rights" and directed:

- Jail Visiting Lawyers (JVLs): Must visit prisons regularly and submit reports.
- Magistrate's Duty: Magistrates and Sessions Judges have an affirmative duty to inform every unrepresented accused of their right to free legal aid at their first production.
- Quality Control: Legal aid should not be a "semblance of procedure" but must be meaningful and competent.

## 5. CONCLUSION

The constitutional framework serves as the soul of legal aid. Article 39A which was inserted by the 42nd Amendment clearly directs the State to ensure that justice is not denied due to economic disabilities, the real power of legal aid lies in its junction with Article 21 and Article 14 of the Constitution of India. The Constitution does not merely recommend aid it demands "Equal Justice" as a prerequisite for a democracy, which ensuring that the Preamble's promise of social, economic, and political justice reaches the most marginalized section of the society. Keeping in mind the various provisions under the Indian Constitution, the Legal Services Authorities Act, 1987, was enacted that provides the skeleton by creating a nationwide network from the National Legal Services Authority (NALSA) at the apex to the Taluk Committees at the grassroots. The legislature has institutionalized access to justice. This framework has successfully moved legal aid from courtroom representation to a broader spectrum including legal literacy, Lok Adalats, and the newly implemented Legal Aid Defense Counsel System (LADCS). It provides a statutory guarantee that poverty shall not be a bar to the temple of justice. The Vigilant guard i.e The Indian judiciary has acted as the "engine" of this movement. Through landmark rulings in cases like *Hussainara Khatoon, M.H. Hoskot*, and more recently, *Suhas Chakma* (2024), the courts have expanded the scope of legal aid. The judiciary has shifted the burden of responsibility onto the State and the presiding magistrates, ruling that the right to counsel is an "Inalienable ingredient" of a fair trial. By treating legal aid as an essential component of "Due Process," the courts have ensured that the law on paper translates into emancipation in practice.

<sup>46</sup> (2012) 9 SCC 408

<sup>47</sup> 2024 INSC 812.