Legal Aid-Access to Justice and Role of Law Students

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**LEGAL AID－ACCESS TO JUSTICE AND ROLE OF LAW STUDENTS**

**ABSTRACT:**

The problems of Access to Justice and Legal Aid have deeply rooted in today’s society, especially in India. People face legal problems every now and then but due to lack of legal aid, some of them settle for injustice. The paper focuses on the problems faced by people to access justice and the importance of Legal Aid as well as the Indian Constitutional provisions regarding access to justice. The data collected in the paper is analyzed in detail highlighting the problematic aspects and suitable recommendations. The role and responsibilities of lawyers and law students regarding the issue are observed in the paper. The researcher has also noted a few suggestions to achieve a truly accessible justice system in India.

Keywords: Access to Justice, Legal Aid, Legal problems, lawyers, law students.

**INTRODUCTION:**

 Justice is one of the profound concepts ever devised by mankind. Justice is a part of human DNA. Even the Book of Deuteronomy states, “Justice, Justice You shall pursue”. But, access to justice is the biggest problem facing the legal profession. Access to Justice simply means to plan your life and to be able to resolve disputes. We should all care about access to justice as most of us have a legal problem at some point of time. The gravity may differ but, all of us are made to confront our dilemmas. We just don’t think that we’re gonna be the prey. Simplest things like signing a rental agreement, buying a life insurance and most commonly clicking ‘I Agree’ on a new software without reading the agreement can eventually lead to a legal problem. Legal problem does not necessarily mean being arrested or charged with a crime but, it may also include the landlord sending eviction notice or being sued. Nearly, 49% people around the globe experienced at least one legal problem in the past two years.[[1]](#footnote-2) People who are near the margins of the society, the one who have the fewest resources are the worst affected by such injustice. Access to justice is something that people of all status should be able to access. As a result we need to tear down the walls between the legal profession and the public. Even the Law Commission of India in its fourteenth report stated,

“…Equality is the basis of all systems of jurisprudence and administration of justice… In so far as a person is unable to obtain access to a court of law for having his wrongs redressed or for defending himself against a criminal charge, justice becomes unequal and laws which are meant for his protection have no meaning and to that extent fail in their purpose. Unless some provision is made for assisting the poor man for the payment of court fees and lawyers fees and other incidental costs of litigation, he is denied equality in the opportunity to seek justice.”[[2]](#footnote-3) Being able to stand against injustice is an important part of maintaining human dignity. We individuals are a part of society and hence we have some social commitments that force us to give back to the society in some way- small or big. The research paper focuses on Legal Aid as an access to justice and the role of students in improving access to justice. The rest of the paper is divided into 4 sections: Section 2 describes the Importance of Legal Aid. In section 3, constitutionality of Access to Justice is discussed. Section 4 discusses the role and responsibilities of law students while Section 5 talks about students contribution and draws some concluding remarks and suggestions.

**IMPORTANCE OF LEGAL AID:**

The Cambridge Advanced Learners Dictionary defines Legal Aid as “ a system of providing free advice about law and practical help with legal matters for people who are too poor to pay for it.”[[3]](#footnote-4) It simply means giving the Pro- Bono legal service or at nominal charges to the people at receiving ends of the society. In India, 32% people faced a legal problem in last two years and unfortunately the few 17% were able to access help of which only 25% of problems were fully resolved.[[4]](#footnote-5) Such low are the statistics. Courts are often inaccessible to people who need protection the most. In-spite of being the largest democracy, we are failing to protect the marginalized and vulnerable people. Several reasons may contribute to it like lack of awareness of the availability of legal aid or people dealing with such problems themselves.

 Dealing with legal problems yourself could eventually lead to poor health, stress, worse legal outcomes or simply giving up and accepting injustice. We have to do more to reach out to the society. We have to be pro-active in finding solutions to stop injustice. However, providing legal aid to the poorest of poor is essential for maintaining the Rule of Law, the very base on which democracy prevails. Law is supreme and will always be. Every individual irrespective of the financial status should be accountable to law. Legal Aid is also important to follow Audi alter partem. Both the parties should be heard in a trial to decide the guilty. With regard to the very inception of Legal Aid as being recognized as the primordial right of every citizen, reliance can be placed on the very tenets of the Magna Carta which was formulated well over seven centuries ago, the beginnings of equal justice under the law were marked by the inscription in the 40th paragraph of the Charter in the following words: “To no one will we sell, to no one will we deny or delay right or justice.” Legal Aid makes sure that everyone is heard. Legal Aid is necessary to remove inequalities in the society. The other reasons people are denied justice are illiteracy and poverty which excludes them of their own rights. Marx rightly pointed out the concept of ‘Haves’ and ‘Haves not’ in the society, with ‘Haves not’ in abundance. Due to this very factor of illiteracy in these ‘Have nots’ , innocent people end up in the jail. Many migrants, workers, farmers are unaware of their rights and end up losing their lives or serving the ‘Haves’. Most people believe the legal system to be a castle with high walls and closed doors for anybody who isn’t a legal insider or hasn’t plenty of money. Unfortunately, it is a shame for the system providing equality before law and equal protection of law where millions of people are not able to access justice. Without access to justice, it is impossible to achieve the Sustainable Development Goals and to build more prosperous, peaceful and equitable world.[[5]](#footnote-6) Lack of access to justice limits the effectiveness of democratic governance by limiting participation, transparency and accountability. Believing that the legal system isn’t stacked in the favour of the rich and powerful, those who can afford lawyers is a cornerstone of our society and democracy. Providing legal aid to such classes of the society will dismantle the idea of law as an inacessable castle, eventually reducing the gap between the poor and the courts. However, it is the moral and ethical duty of a lawyer to ensure that financial condition should not be an obstacle to pursue justice. Article 6 of European Convention on Human Rights also recognizes the right to fair trial.[[6]](#footnote-7) Taking into account the importance of legal aid, various bodies have been established so far. The National Legal Services Authority (NALSA) was set up under the Legal Services Authorities Act, 1987 organizing Lok Adalats for faster dispute redressal benefiting the weaker sections.It laid down guidelines for free legal aid to the weakest of the weak. It also carries out legal literacy and legal awareness campaigns even in the prisons of India. The world development goals cannot be met without access to justice of which legal aid is an important component. According to the NALSA Annual Report, in 2019 across 12.10 lakh people benefited across the country.[[7]](#footnote-8) Apart from this, The Supreme Court Legal Service Committee, Taluka Legal Service Authority, NGO’s and Law Firms doing pro-bono cases were set up.

**Constitution of India- Access to Justice:**

In ancient India, people always had access to their Kings as seen in Ramayana. The system of courts came up with the emergence of British rule. The rights that earlier existed in society were later enshrined in the constitution. ‘Access to Justice’ is a basic human right conferred by the common law and exists unless it is taken away under any valid exercise of statutory or constitutional power by the legislature. The text of the preamble highlights the term JUSTICE. This concept borrowed from the Russian Revolution of 1917, states that can be social, economic and political as well. These forms of justice are further secured with help of Fundamental Rights and Directive Principles of State Policy. Social justice includes equal treatment of individuals irrespective of their caste, colour, creed, race, sex, etc. Economic justice is non- discrimination taking into account the financial conditions of workers. Political justice implies giving everyone equal political rights and access. Article 14 states that no person shall be denied equality before law and equal protection of laws within the territory of India. This right is applicable to both citizens as well as foreigners. Equality and Justice go hand in hand. The term persons include natural and artificial persons both. This article gives people right to access to justice, legal help irrespective of their financial conditions. No special provision can be given to any of the person. The general and theoretical notion of equality stated in article 14 is spelt out in greater detail in Article 15(1). The article allows the state to make special provisions for socially and educationally neglected classes of the society.

Article 21 states that no person shall be deprived of his life or personal liberty. In the Maneka Gandhi v. Union of India[[8]](#footnote-9), the Supreme Court widened the scope of article 21 and held that these rights can be taken away by procedure established by law provided the procedure is reasonable. The procedure that doesn’t provide free legal aid and liberty to the people is unreasonable. The Supreme Court later in the Hussainara Khatoon IV V/s. Home Secretary[[9]](#footnote-10) case held that right to free legal aid is an essential component of right to life. If not provided can eventually result in taking up the life and personal liberty of a person. Similarly in the Sukh Das v. Union Territory of Arunachal Pradesh[[10]](#footnote-11) case, the Supreme Court held that free legal aid at the states cost will be given to the accused under reasonable, just and fair procedure. Articles 21 and 22(1) states that no person shall be denied free legal representation if he fails to apply for it. It is the duty of the magistrate to see if the accused has legal representation or not. It was seen by the Supreme Court in the case of Mohd. Ajmal Amir Kasab vs. State of Maharashtra[[11]](#footnote-12) that before a trial, it is the duty and obligation of the magistrate to make the accused (provided he has no means to consult a lawyer) aware of his rights and give free legal aid at the cost of state. Article 22(1) is a right provided to both citizens and non-citizens.

Article 32 provides the right to remedies if the fundamental rights of a person are violated. If the fundamental rights of a person are violated, the Apex Court can pass writs of Mandamus, Habeas Corpus, Prohibition, Certiorari or Quo- Warranto. The right under Article 32 to petition the Supreme Court for enforcement and protection of fundamental rights is itself a fundamental right. In Keshav Singh Re[[12]](#footnote-13), the Indian Supreme Court said “The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the court in that behalf.” This is the only reason Dr. Babasaheb Ambedkar called Article 32 the most important article. The Apex Court held that article 32 is the basic feature of the constitution. Hence, it can’t be taken away by any amendment. It is essential to enforce right of Access to Justice in true sense. Article 226 also provides High Courts the power to issue writs For violation of fundamental rights and other issues and hence, is not included in the category of Fundamental Rights in the Constitution of India. It was however found insufficient, and therefore a categorical observation was made that in order to live up to the expectations of the citizens of this country, it was quintessential that the role of the State was to find its guidance from the very Constitution.

Coming to the Directive Principles of State Policy enumerated in part 4 of the constitution, Articles 38, 39A, 41 & 46 though not enforceable aptly contain the philosophy of the Constitution. Granville Austin rightly pointed out it to be the ‘Conscience of the Constitution’. Under article 38, it is the duty of State to reduce the gaps in income, status, facilities and opportunity and hence maintain equality. Legal Aid comes under its ambit as it maintains equality in the society.

Article 39(A), added by the 42nd Amendment Act clearly mentions that it is the duty of the state to provide free legal aid and hence promote equality among people. It was removed as entry 3 from state list and was added under concurrent list as entry 11-A so that both centre and state should make laws for promoting equality. Under Article 41, state is obliged to provide public assistance in cases of unemployment, old age, sickness and disablement. Article 46 promotes educational and economic interests of underprivileged and other weaker sections of the society containing justice and avoiding exploitation. Article 282 states that the Union or State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which respect to which Parliament or the Legislature of the State, as the case may be, may make laws.[[13]](#footnote-14) So under this article State provides free legal aid to the downtrodden. As — Justice William J. Brennan Jr states, "For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs.”[[14]](#footnote-15)

It was according to such momentous decisions that people’s faith in the Legal System is still intact. However, the right to legal aid in India is now firmly entrenched in the Legal Services Authorities Act, 1987. S.12 of that Act provides that legal aid will be available both on the means test as well as the merits test. In fact, for a wide range of litigants with special needs, for instance, persons in custody, children, women, complainants under the SC/ ST Act, workmen, legal aid is automatically available for filing or defending a case irrespective of the economic status of that person. We have, under the Act, an extensive network of legal aid committees at the taluk, district and State levels. In addition, every High Court and the Supreme Court has its own legal services committee. The task before these committees to provide effective and quality legal aid, that will not be restricted to legal representation in courts but also counseling an advice, is an important and daunting challenge.

**Role and Responsibility of Lawyers and Law Students:**

 Law is a very powerful tool in democracy and a lawyer is a powerful medium through which justice is ensured to be delivered and a compassionate lawyer can be instrumental to bring about change not only inside but outside the courtrooms. Legal Aid is not a charity work, but is a social obligation on the lawyers and law students. It is the responsibility of every lawyer and law student to promote access to justice. Lawyers being the officers of the court, it is their duty to protect the human rights. It is the duty of lawyers to give pro-bono legal aid thereby maintaining the quality of the same. Thus, lawyers can provide effective legal aid by performing the roles of panel lawyers, Retainer lawyers, Legal Aid Counsels in Magistrate Courts (Remand Lawyers), Jail visiting lawyers, Community Paralegal Volunteers (Prisons), Convict Paralegal Volunteers, Lawyers Attached to Police Stations (Duty Counsels), Community Paralegal Volunteers (Police Station), etc. The people neglect pro-bono help due to this very reason- the quality of legal aid. This may be due to enormous number of cases or overlooking of facts by the lawyers or inadequate help from colleagues. To rectify this very problem, more and more law students should be given a chance to access High Courts and Supreme Court to gain some practical exposure. Lawyers should be ready to work in poor renumeration to their best. The quality of legal services provided should not decline at any cost. One other alternative can be practising of senior lawyers in the country. After-all, they too live in a society and they are under moral obligation to give something back to the society. Practising of senior lawyers will eventually help the poor in attaining justice and thus improving the quality of legal aid thereby, bringing people’s faith back in pro-bono services. It is the responsibility of lawyers to implement the Rule of Law, the very founding stone of democracy. As Albert Einstein rightly said, “In matters of truth and justice, there is no difference between large or small problems, for issues concerning the treatment of people are all the same.” In the current scenario, the institutions set up for access to justice are not adequate. Law students as well as lawyers need to take up the responsibility to their shoulders. Lawyers should also conduct legal aid camps to make speedy justice available to the needy and making people aware about their rights and responsibilities. Law is powerful and lawyers hold the key to that power because they know how to interpret, simplify and apply the law. But when they fail to transfer that power, that knowledge to people, the very system built to protect and safeguard rights of the people becomes exploitative. Strategic litigation should be practiced by lawyers to solve multi-dimensional problems in multi-dimensional ways.[[15]](#footnote-16) As Mahatma Gandhi rightly pointed out, there is a severe need to go to the grass root level i.e. the villages, the most affected and overlooked. Conducting seminars in such areas of the country would prove to be of immense help to the illiterate people understand the provisions of law, eventually establishing Social Justice. As the saying goes- ‘Prevention is better than cure’, Lawyers should focus more on ‘pre- litigation settlement’. As the court procedure is slow, frustrating and at the end nothing really changes; many people settle for injustice instead of approaching the courts. Developing a practise of pro-bono litigation settlement by lawyers would thus reduce the burden on the courts and make the dream of complete access to justice for the poor a reality. The lawyers should thus ensure the co-ordination in the legal aid movement. As observed there exists a tremendous gap in the goals set and the goals met. There needs to establish a pro-bono culture in the society. Law students have an important role to play in the legal aid clinics established by various educational institutes and thus promote access to justice to the poor. The 230th Law Commission Report titled “Reforms in the Judiciary – Some Suggestions, has argued for the creation of new benches of High Courts. The report observed: “… It is also necessary that the work of the High Courts is decentralized, that is, more Benches are established in all States … It is also in the interest of the litigants. The Benches should be so established that a litigant is not required to travel long.”[[16]](#footnote-17) Therefore, in order to reduce the cost of litigation, it is necessary to establish more and more benches of High Courts. A few law schools in India are in the vicinity of High Courts and Supreme Court. Hence, setting up of more benches would give the students a higher chance to gain a first-hand experience while studying. The Law Commission of India in its 184th Report has elucidated and underscored the need for drastic remedial steps to be taken in order to bring transformation in the way Legal Education has been perceived and implemented, including revamping changes to the core structure of implementation in Legal Education. It was also for the very first time that it was realized that a mere declaration to that effect will not suffice, what was needed was also a series of concerted actions taken by The Bench, the Bar, the Legal Academia and the Legislators in order to do their part to instill and inculcate the spirit of Social Engineering into the next Generation of Lawyers. It is therefore, a responsibility of lawyers to not oppose the idea and it’s high time to think about the society and people.

Most members of the Indian legal community - law teachers, the bar, the bench, legal aid experts agreed that law schools should play an active role in the country's fledgling legal aid movement, believing that isolation or exclusion of law schools from legal aid programs would be self defeating for legal aid, legal education and the legal profession. The time and expertise of law teachers as well as the motivated minds of enthusiastic and youthful law students were considered a national resource to be harnessed in the national interest to achieve the constitutional goal of equal justice for all. Legal aid is a national necessity and a constitutional imperative in India. Massive poverty and illiteracy make the task gigantic. The nature of legal aid programs has determined the shape and activity of law school clinics; the educational benefits of clinical activity are merged with, incidental to, and not more important than the mission of contributing to the national cause of legal aid service. Thus, the view is shared widely in India by political leaders, legal educators and many lawyers and judges that law students can and should take a leading role in providing legal aid and assistance to the poor. The law students and lawyers should collaborate with doctors, social workers and society and try to bring law to the people who have legal problems in the community. The senior/retired lawyers donating their time to mentor young lawyers who are trying to improve access to justice will eventually turn out to be fruit full in the long run. The law students should therefore be thoughtful, creative, bold. They should broaden and deepen access to the services particularly to those who need these services the most. Dating back to Ramayana, it can be seen that Vibhishana was the first and the oldest amicus curiae to perform his duty of making aware Ravana of Hanumana’s right when Ravana ordered to punish Hanumana.[[17]](#footnote-18) Last but not the least the Plan of Action whether a lawyer or law student should be 1. Take Notice. 2. Demand Change. Performing these rolls and taking up these very responsibilities is necessary to keep people’s faith in judiciary and legal institutions intact. This would also result in taking a step forward to a world with ease of legal aid and access to justice. With a lawyers assistance, court can uphold rights of hundreds of people and hold abuses to accountability.

**Student’s Contribution, Conclusion and Suggestions:**

 Law, legal education and development, access to justice have become interrelated concept in modern developing societies to fulfill the dream of social welfare state in true sense. The more number of times the topic of Access to Justice is discussed, more dimensions can be found. Access to justice can also mean that people can participate in the justice system. The idea of a truly accessible justice system is so far away that most of us haven’t given it any thought. But everyday justice affects us all and its absolutely possible to get there from here with small efforts towards the society. In various legal aid committee reports, very less focus is kept on the analysis of legal problems of the poor. Sufficient funds need to be provided by the state so that no person is deprived of legal help or advice due to lack of funds. As Justice Blackmun said, “The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice.”[[18]](#footnote-19) However, a major transition can be seen in Supreme court’s view from a duty to a fundamental right to ask for free legal aid. In-spite of all these attempts, we haven’t really arrived at a total justice system yet, we’re just in the process of evolution. The society, schools have over the time narrowed the scope of word ‘justice’. Before we know it, we’re pushed into lucrative spaces-like it or not and we get caught and forget to pause, to think, to question. We need to be conscious to reclaim the space to define ‘justice’ to ourselves and not by the rhetoric which is being fed to us our entire life.

Some suggestions for the same could be:

* Income is the only yardstick used to identify the beneficiary in India. Whereas, other developed countries use the ‘means test’ which also includes property along with income. This is a more progressive and modern test to identify the person in real need.
* With a vision to bring about change, people should be trained to share the knowledge of laws and entitlement which government is supposed to provide them and the knowledge to hold them accountable.
* A helpline number can be allotted to each district to register for legal aid or advice. This sharing of one phone number can give the largely illiterate and dis-empowered community an avenue to demand accountability.
* There is a need to use the bottom-up approach. The Gram Panchayats should take initiative to conduct legal - literacy programs to educate the youth at the grass root levels about their rights. The Gramsevaks, being educated enough should provide basic legal knowledge to the villagers while the Block Divionsal Officers could keep a track of the same.
* In most of the cases, women are at the receiving ends. As a result, Ministry of Women and child Development should make provisions for the legal upliftment of these sections.
* Similar to ‘Asha workers’ who are appointed for health care in rural areas, ‘social workers’ should be appointed for legal care.
* Adoption of villages by large private groups for curbing the problem of free legal aid should take place.
* Proper implementations of the legislations regarding free legal aid should be done instead of passing new legislations.
* The lawyers should use plain and simple language while drafting a contract, so that anybody could understand it.
* The quality of legal education in the country should be improved. Implementing the butterfly effect from The Chaos Theory would indeed prove to be beneficial here.
* The students should not be given an illusion of choice at the critical stages of law school career. Instead, legal aid should be made a mandatory concept in these crucial years of learning.
* Proper Alternate Dispute Resolution methods should be used to large extend by the judiciary to speed up the process of settling matters that can be settled outside the courts thereby reducing the burden on courts.
* People should contribute monetary help to NGO’s and groups working towards bringing justice closer to the marginalized. These payments can be tax deductible.
* Fact filing investigations should be done at the ground level regarding non-implementation of legal benefits.
* Universal Legal Coverage should be set up similar to the Universal Health Coverage.
* Big law firms should dedicate certain time to pro-bono cases.
* Not only law students, but every student in the country should dedicate their career in some way to access to justice.
* There are several instances when the courts decisions failed to trickle down to people and have failed to become a reality. This gap between theory and practise should be filled by:

 i . Giving students credit for legal aid.

ii . Giving workload credit to the faculty.

iii . The involvement of Bar and Bench.

iv . Effective collaboration with Legal Services Authority(LSA).

v . Offering legal aid as a compulsory course for law students.

* The three A’s should thus be achieved:
1. Awareness: Empowering people by letting them become aware of their rights and powers and the way to secure those rights to themselves.
2. Assertion: Assist and facilitate those people to assert those Rights as a matter of “Right” rather than a conferment or a bestowal of some benefaction.
3. Adequate Arrangements: Once Objective 1 and 2 are secured, the State shall make adequate arrangements so that these rights are rightfully given to those who assert them.

**References:**

1. Deborah L. Rhode,Access To Justice: A Roadmap For Reform, 41 FordhamUrb. L.J. 1227 (2014).
2. Dr. G. Mallikarjun, LEGAL AID IN INDIA AND THE JUDICIAL CONTRIBUTION.
3. Bajpai A, Learning by Doing—Promoting Access to Justice to the Marginalized and Vulnerable Groups in India, Asian Journal of Legal Education, 2016;3(2):201-208.
4. Gurmeet Nehra, Access to justice: Role of legal aid in its complete realization, International Journal of Law, 2016,2(5): 77-83.
5. Kriti Madan & Swati Gupta, Legal Aid in India, Legal Service India. 261.
6. Justice M. Jagannadha Rao, Access to Justice, Delhi High Court library.
7. Khan, Ammaz, and Rabia Manzoor. Women’s Access to Justice in Pakistan: Understanding Barriers, Sustainable Development Policy Institute, 2020, pp. 304–322,
1. WORLD JUSTICE PROJECT, Global Insights on Access to Justice 2019, at 6 (2019). [↑](#footnote-ref-2)
2. Law Commission of India, Fourteenth Report, 1958, p.587 [↑](#footnote-ref-3)
3. <https://dictionary.cambridge.org/dictionary/english/legal-aid> accessed on 19-10-2020. [↑](#footnote-ref-4)
4. WORLD JUSTICE PROJECT, Global Insights on Access to Justice 2019, at 51 (2019). [↑](#footnote-ref-5)
5. UN, Sustainable Development, Sustainable-development-goals. [↑](#footnote-ref-6)
6. Equality and Human Rights Commission. [↑](#footnote-ref-7)
7. NALSA, Library, Annual Report, 2019 [↑](#footnote-ref-8)
8. MANU/SC/0133/1978 [↑](#footnote-ref-9)
9. (1980)1SCC98 [↑](#footnote-ref-10)
10. AIR 1986 SC 99 [↑](#footnote-ref-11)
11. (2012)9 SCC 1 [↑](#footnote-ref-12)
12. AIR 1965 SC 745. [↑](#footnote-ref-13)
13. INDIA CONST. art. 282. [↑](#footnote-ref-14)
14. WWW.brennancenter.org/about/history [↑](#footnote-ref-15)
15. NAZDEEK-Bringing Justice Closer, Action. [↑](#footnote-ref-16)
16. 230th Law Commission Report, Reforms in the Judiciary – Some Suggestions. [↑](#footnote-ref-17)
17. Wisdom from The Ramayana: On Life and Relationships, 2018. Fingerprint! Publishing, p.240. [↑](#footnote-ref-18)
18. Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968) [↑](#footnote-ref-19)