

ACCESS TO JUSTICE IN INDIA

by

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1. GENERAL INFORMATION

British ruled India from 1857 until it gained independence from British colony in 1947. With Independence, Hindu and Sikh occupied areas remained with India and the predominantly Muslim occupied areas went to Pakistan. Scholars estimate that over 10 million people were displaced in the process of their relocation to the country where their religion was predominant and that a million people died as a result of partition.

India is a country of 1.284 million square miles in area and the most populated states are Uttar Pradesh, Bihar, Maharashtra, West Bengal, and Andhra Pradesh. Constitution of India came into effect on January 26, 1950, making the nation as a sovereign democratic republic. The constitution seeks to establish a sovereign, socialist, secular and a democratic republic. All adult citizens of India possess the right to vote, inequality of sexes is outlawed, constitution recognizes no class barriers, Indian polity guarantees freedom of opinion, assembly and association.⁷

With an estimated population of 1.37 billion, India is known to be the largest democracy in the world with a competitive multiparty system at federal and state levels (UNDP report: 2019 and Freedom House: 2019). India is a constitutional parliamentary democracy comprising of 28 states and seven Union Territories (UTs), including the National Capital Territory (NCT) of Delhi. Indian Constitution is federal but has strong unitary characteristics. Centre and states have autonomy in certain public policy spheres. It is a multiparty system with a federal structure. “With the rise of regional parties and emergence of coalition governments both at the centre and in most states, the dynamics of Indian polity moved towards cooperative federalism”.⁸

India has both a President (as the Head of State) and a Prime

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⁷ Sri Ram Sharma, “Indian Democratic Constitution” Foreign Affairs, Issue March/April, 2020. Available at: <https://www.foreignaffairs.com/articles/india/1950-04-01/indias-democratic-constitution>

⁸ Reena Nand, The dynamics of Indian Political System, The Indian Journal of Political Science, Vol. LXXI, No. 2, April-June, 2010, pp. 413-424.

Minister (as the Chief Executive of the Government of India). There is a bi-cameral legislature- Upper House or council of states (Rajya Sabha) and the Lower House or house of the people (Lok Sabha). The lower house has 545 members: 543 elected from single-member constituencies (79 seats are reserved for “Scheduled castes” and 40 for “Scheduled tribes”) and two representatives of Anglo-Indians appointed by the president. The upper house has 245 members: 233 elected by the Members of Parliament and the Legislative assemblies of States and Union Territories, and 12 appointed by the President (The Commonwealth).

The Prime Minister is elected by the Lower House and appoints and heads the Councils of Ministers. The President is elected by an electoral college consisting of Members of the Parliament and State Assemblies. The states, Delhi and the UT of Pondicherry have elected legislatures where Chief Ministers are the real executive heads. The other UTs are ruled directly by the candidate appointed by the Central government. Each state has a Governor, appointed by the President of India.

Indian Constitution serves as the basis for the operations of the Executive, the Legislature and the Judiciary with a decentralized system of governance. Indian states are governed by Chief Ministers, who are the elected leaders of a political party or a coalition of parties that has a majority of the seats in a State Assembly. Each state also has a Governor, a federal appointee, who holds a ceremonial, non-partisan, constitutional position. Post-election, the Governor of the state invites the party that won maximum number of seats to form the government.⁹

Indian judiciary has an integrated court system that administer Union and State laws. Judicial System of India consists of the Supreme Court, High Court, District Court or Subordinate Court. The Supreme Court is highest and the ultimate court of appeal. Arendt Lijphhart characterizes Indian democracy as having a “strong” judicial review, where the Supreme Court of India is similar to the US Supreme Court. It has declared many National laws and Ordinances unconstitutional.¹⁰

The country is incredibly diverse in terms of political identities, including castes, communities, tribes, economic classes, ethnicities, languages, customs and religions. About 80 percent of Indians are

⁹ Hartosh Singh Bal, “India’s Embattled Democracy” <https://www.nytimes.com/2018/05/30/opinion/india-democracy.html> last accessed 17 Sept 2019.

¹⁰ Arendt Lijphhart, *Patterns of Democracy*, 226.

Hindus, 14 percent are Muslim, 2.5 percent are Christians, and the rest include several other faiths such as Buddhism, Sikhism, Jainism and Zoroastrianism. There are almost 170 million Muslims and 25 million Christians (Samuels, 2018: 176).

Chart 01. Distribution of population by religion

Religion	Number	%
All religious communities	1,028,610,328	100.0
Hindus	827,578,868	80.5
Muslims	138,188,240	13.4
Christians	24,080,016	2.3
Sikhs	19,215,730	1.9
Buddhists	7,955,207	0.8
Jains	4,225,053	0.4
Others	6,639,626	0.6
Religion not stated	727,588	0.1

Source: Religion, Census of India 2011

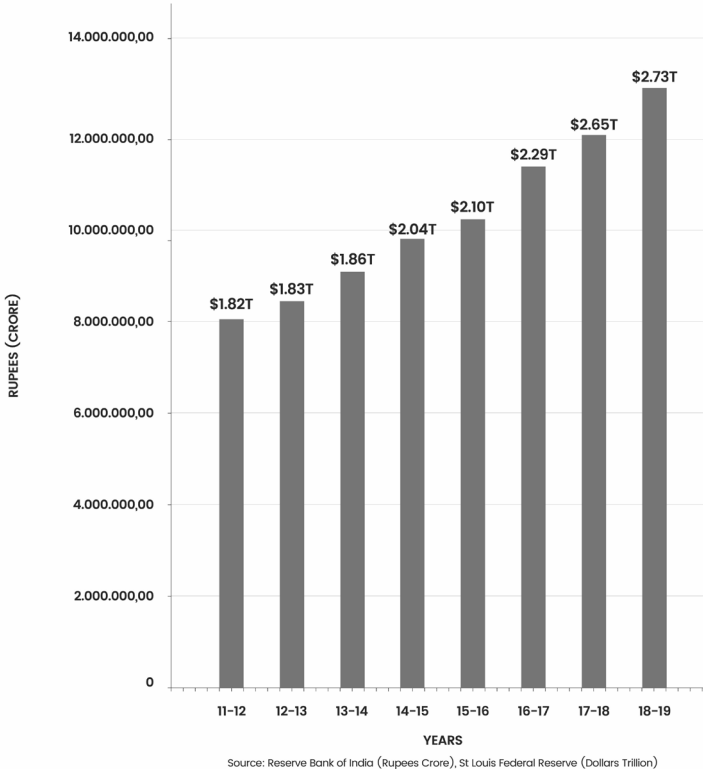
There is no national language, according to the Indian Constitution. However, Article 343 of the Constitution recommends Hindi as the official language of the government along with English. The Census of India 2011 lists languages that are specified as mother tongue by more than 10,000 people. There are 121 languages and 270 mother tongues. The 22 scheduled languages are specified in the Eighth Schedule to the Indian Constitution (Part A) and 99 non-scheduled languages (Part B).

In 1991, India began to liberalize its economy and has since then made considerable growth in its gross Domestic Product (GDP), “averaging between 6 and 8 percent annually”. This significant growth placed Indian economy as the fourth largest in the world, in terms of Purchasing Power Parity (PPT) by 2007 (Shambaugh and Yehuda, 2014:173). The economy slowed again in 2017 due to demonetization and introduction of GST. CIA World Factbook for 2011 ranked India as the ninth economy in terms of PPP. The estimated GDP in 2011 was recorded \$1.68 trillion. The service sector was accounted for “55.6 percent of GDP in 2011, with the agriculture sector accounting for 26.3 percent, and the agricultural sector accounting for 18.1 percent”, per CIA World Factbook for 2011.

India’s Gross Domestic Product per capita was recorded at 6899.20 US dollars in 2018, when adjusted by purchasing power parity (PPP).

GDP per capita PPP in India averaged 3624.14 USD from 1990 until 2018, reaching at 6899.20 USD in 2018 (World Bank).¹¹ India's Gross National Income (GNI) per capita for 2018 was \$2,020.

Chart 02. GDP per capita in rupees and dollars trillion



India's major industrial sectors are textiles, food and food processing, biotechnology, steel, automotive, drugs and pharmaceuticals, heavy and light engineering, minerals and mines.

According to the Inclusive Development Index, declared by World Economic Forum 2018, India ranks 62nd out of 74 emerging economies. The report revealed inequality in the workplace, with women receiving 34% less wages than male counterpart for the same work (World Economic Forum, 2019). About 47.9% of the Indian households having more than five children are severely deprived of

¹¹ Trading Economics, Available at: <https://tradingeconomics.com/india/gdp-per-capita-ppp> last accessed 20 Aug 2019.

shelter, water, sanitation, health and education as compared to 7.8% of poor families without children. Rich 1% in India hold 58% of the total wealth of India indicating extreme inequalities.¹² UNDP reports an improvement in life expectancy at birth to 68.8 years in 2017. The latest Sample Survey (SRS) shows an overall life expectancy at birth to 69 years, with women expected to live for 70.4 years and men for 67.8 years.¹³ Between 1990 to 2017, expected years of schooling and means years of schooling have increased by 4.7 years and 3.4 years. Current expected years of schooling is 12.3 years and means years of schooling is 6.4 years. India's GNI per capita increased by about 262.9 percent between 1990 and 2018.¹⁴

According to the United Nations Development Programme, India's HDI value has increased from 0.427 to 0.640 between 1990 and 2017, placing India in the medium human development category. However, the HDI value has declined by more than a fourth when adjusted for inequality. The value of Inequality-adjusted HDI has dropped to 0.468.¹⁵

Unemployment rate was recorded at 6.1% in FY 17-18. The Periodic Labour Force Survey (PLFS) of the National Sample Survey Office (NSSO) showed the employment rate FY 17-18 was at 5.3% in rural India and 7.8% in Urban India, resulting in overall unemployment rate of 6.1%.¹⁶ According to United Nations, Sex Ratio of India in 2019 is 107.48 (i.e. 107.48 males per 100 females). India has 930 females per 1000 males. India has 48.20% female population compare to 51.80% male population".¹⁷

¹² Available at: https://www.business-standard.com/article/current-affairs/3-times-higher-poverty-rates-in-indian-households-with-children-survey-119070900133_1.html last accessed 14 May 2019.

¹³ Rahul Tripathi, "India's life expectancy improves marginally" The Economic Times, Available at:

https://economictimes.indiatimes.com/news/politics-and-nation/life-expectancy-improves-marginally-at-birth-to-69-years/articleshow/71041328.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst last accessed 15 May 2019.

¹⁴ Human Development Report 2019 on, "Inequalities in Human Development in the 21st Century", Available at: http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/IND.pdf last accessed 17 May 2019.

¹⁵ Shalini Nair, "Millions out of poverty but glaring inequalities in India, reveals Human Development Index report", Available at: <https://indianexpress.com/article/india/human-development-index-undp-poverty-in-india-5357374/> last accessed 18 May 2019

¹⁶ ET Bureau, Economic times, Available at: <https://economictimes.indiatimes.com/jobs/indias-unemployment-rate-hit-6-1-in-2017-18/articleshow/69598640.cms?from=mdr> last accessed 02 June 2019

¹⁷ Sex ratio of India, Ministry of Statistics and Programme Implementation

UN (World Population Prospects 2019), Available at: <http://statisticstimes.com/demographics/sex-ratio-of-india.php> last accessed 16 May 2019.

2. LEGAL SYSTEM

2.1. TYPE OF LEGAL SYSTEM

The legal system in India has been a by-product of the common law influences of the colonial British rule and the Government of India Act, 1935. However, the personal law influences also hold a prominent position, with Hindu and Muslim personal laws being applicable in matters of marriage and divorce.

India is a Quasi federal country with 28 states, 9 union territories with one National Capital territory. All the States and Unions have their own separate governance yet at the time of emergency states merge into the Union i.e. the Union is more powerful than the States. In India, the President being the head of the Executive is the head of the State. He is elected indirectly by an electoral college which constitutes all the current elected members from both houses of Parliament, all current elected members from every Legislative assembly's (i.e. including all 28 states and the Union Territories of Delhi and Puducherry). Yet, the real power lies with the Prime Minister, as the head of the Council of Ministers and the political head of the State. He is the head of the party who has won the majority of seats in the Lower House (Lok Sabha) elections and is appointed for 5 years or till the time his party holds majority in the Lok Sabha.

India has a bicameral parliamentary system, with the lower house being House of People (Lok Sabha) and upper house being Council of States (Rajya Sabha). President is the executive head at the Centre. The executive head of the States (provincial units in India) is the Governor with most of them having a single legislative body called as the Legislative Assembly. Six states, namely Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana, Uttar Pradesh have a bicameral system with lower house being their legislative assembly and upper house being their Legislative Council.

2.2. THE INDIAN JUSTICE SYSTEM

India follows a uniform system of justice delivery. It is a pyramidal structure with the Supreme Court at the top and High courts at the States along with numerous subordinate courts respectively at the bottom. In the stricter sense of the term, India does not follow the federal structure. There is one Unified Judiciary, yet there are no separate federal courts to exclusively decide federal matters. All the Fundamental Rights and the Constitution are upheld by the Judiciary. The courts follow adversarial system in which both the parties present

arguments before an impartial judge who would not indict the accused unless the case has been proven beyond reasonable doubt by the prosecution. The Constitution ensures independence of Judiciary i.e. the judiciary will function independently without any interference from the executive or legislature.¹⁸ Each state is divided into smaller sub units called at Districts, each district has a Districts and Sessions court or Metropolitan Magistrate Court as the highest court. It deals with matters of both Civil and Criminal nature. A decision from the district court is appealable to the High Court of that State, which has an independent functioning and the same can be challenged in the Supreme Court. The procedure of this hierarchy has been laid down in the Constitution itself. In India too, like the common law in England, laws are developed vide judicial pronouncements and such decisions act as precedents for the lower courts.¹⁹ The Supreme Court has also been entrusted with the power of Judicial Review.²⁰ It is the power to determine the validity of any law passed by the Parliament and declare it void if it is in derogation with the Constitution. Judiciary acts as a watchdog of democracy and the protector of Fundamental Rights and Constitutional ideals. The Preamble to the Constitution of India guarantees Social, Economic and Political justice. The purpose of the Court is to achieve these ideals laid down in the Preamble. Justice has a twofold meaning:

- (i) Criminal Justice - it includes investigating agencies such as police, prosecution, defendants and courts.
- (ii) Civil Justice - it includes plaintiff, respondent, government machinery and courts.

2.2.1. General Functions of Courts in India

- (i) Administration of justice in accordance with law
- (ii) Adjudication of civil and criminal cases
- (iii) Decides on Constitutional questions
- (iv) Administrative functions
- (v) Advisory functions
- (vi) Protection of fundamental rights in the form of Writ Jurisdiction

¹⁸ Article 50 of the Constitution of India 1950.

¹⁹ Article 141 of the Constitution of India, 1950.

²⁰ Article 137 of the Constitution of India, 1950.

2.2.2. Hierarchy of Courts in India

2.2.2.2. Supreme Court of India

The Supreme Court has the following kinds of Jurisdiction:

(i) *Original Jurisdiction*: Supreme Court is approached as the court of first instance in disputes between States, or, between State and Centre.²¹ Supreme Court can also be approached by private individuals for infringement of their fundamental rights under the Writ Jurisdiction.²²

(ii) *Appellate Jurisdiction*: If the High Court certifies that a substantial question of law needs the determination of the Supreme Court for interpretation of a pertinent question of law then a matter goes into the apex court.²³ The Supreme Court is the final authority to construe the meaning of the law by interpreting the scope of the constitutional makers.

(iii) *Advisory Jurisdiction*: The President of India can refer a matter to the apex court for its opinion on any issue of public importance.²⁴ The court can advise upon the issue but the President is not bound to act upon such advice.

(iv) *Court of Record*: The Judgements passed by the Supreme court act as precedents for the lower courts as they are apprehended as legal refence. The Court can also punish for its Contempt.²⁵ The Decision of the Apex court cannot be challenged anywhere.

(v) *Revisory Jurisdiction*: It is the highest Court of Judicature in India. It has the power of Judicial Review for the acts of the executive and legislature.²⁶ Since it is the court of record and its decisions are final and cannot be challenged anywhere, the court itself can review any of its previous decisions.

2.2.2.2. High Courts of the States

The High Courts of the States has the same functions as that of the Supreme Court, barring a few functions which are exclusive to the Apex court only. The jurisdictions remain the same and is applicable

²¹ Article 131 of the Constitution of India, 1950.

²² Article 32 of the Constitution of India, 1950.

²³ Article 132-134 of the Constitution of India, 1950.

²⁴ Article 143 of the Constitution of India, 1950.

²⁵ Article 129 of the Constitution of India, 1950.

²⁶ Article 32, 136 and 137 of the Constitution of India, 1950.

within the territory of the respective High Court.

- (i) *Original Jurisdiction*
- (ii) *Appellate Jurisdiction*
- (iii) *Writ Jurisdiction*
- (iv) *Court of Record*

2.2.2.3. District and Subordinate Courts

(i) *Proceedings of civil cases in accordance with the Code of Civil Procedure 1908*: In Civil matters, the wrong committed against a private individual include torts or breach of a contract etc. The matters are filed on the basis of territorial and pecuniary jurisdiction of the courts.²⁷ All matters of Civil nature are dealt under the Civil Procedure Code and compensation is often accorded to party whose legal right has been infringed. A matter often arises at the lowest court²⁸ i.e. of Judge Small Cause Court with upto Rs. 5000, then Senior Civil Judge/CJ with matters from Rs. 5001 to Rs.3,00,000 followed by the District Judge/ADJ with matters from Rs.3,00,001 to Rs.2,00,00,000. Matters above this amount directly go to the High Court. The demarcation of these courts is often done based on the pecuniary limit of that court, which differs from state to state, often decided by the High Court of that state.

(ii) *Proceedings in Criminal cases in accordance with the Code of Criminal Procedure 1973*: For criminal matters, India follows adversarial system in which both the parties present arguments before an impartial and neutral judge. The judge acts as an adjudicator whose duty is to weigh evidence presented by both the parties and decide on the basis of weightage of arguments. If the accused is not proven to be guilty beyond reasonable doubt then the accused is assumed innocent, and the weight to prove lies entirely upon the prosecution. Accused, as a right cannot be compelled to become a witness against himself, and he can choose to remain silent. The objective of this kind of a system is to never punish an innocent even if that is at the cost of letting a guilty person free for lack of evidence. The trial is verbal, continuous and argumentative where both the sides are accorded the oppor-

²⁷ Section 9 of the Code of Civil Procedure 1908 the Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

²⁸ Section 15 of the Code of Civil Procedure 1908 lays down that every suit must be instituted in the Court of the lowest grade having jurisdiction to hear it.

tunity of Examination in Chief and Cross Examination of witnesses to strengthen their arguments and undermine the opposite side. In the end, judge uses his discretion to decide based upon the arguments and facts presented by both the parties. If, not satisfied by the decision, the party has an opportunity of appeal to the higher court. The procedure for criminal proceedings has been laid down in the Code of Criminal Procedure 1973.

2.2.2.4. Village Courts at Panchayat Levels

The Gram Nyayalya Act came into force in 2009. The Act mandates formation of mobile courts in villages in order to reduce the backlog of cases and make justice accessible to the rural population. It can take both civil (cases amounting to less than 20,000) and criminal cases (attracting lower than 2 years imprisonment) and representation by lawyers is not mandatory. In order to make the judicial process participatory and decentralised, it permits the appointment of local social activists and lawyers as mediators and also prescribes participation from the Scheduled castes and Scheduled tribes.

2.3. THE STRUCTURE OF THE LEGAL PROFESSION

India though is quasi federal State in character, yet the bar has a unified structure with the Bar Council of India at the helm of affairs. It determines from the eligibility criterion for a law graduate to get enrolled in the bar, through an all India level bar exam and then to enroll as an Advocate. In total there are 25 High Courts in India, whose functioning is delegated by the Bar Council of the respective State. The legal profession is governed by the Advocate's Act, 1961. It Act deals with the Bar council of India (it includes the Attorney General of India and the Solicitor General of India as its ex officio members) and the State bar councils. Other members include at least one from each state bar council of all the states (the number of members from each state is determined on the basis of number of advocates enrolled on its rolls; they are elected as members by the system of proportional representation by means of a single transferable vote amongst advocates on the electoral roll of the respective State Bar Council).

Most of the work done by Advocates are in their individual capacity as domestic lawyers. The mushrooming of litigation firms and law offices is a fairly recent phenomenon, both of which also determines its code of conduct and eligibility criterion from the regulations laid down by the Bar Council of India. There are two categories

of Advocates in the Supreme Court and the High Courts - Senior Advocates and other Advocates. A lawyer is designated as a Senior with his consent followed by his long standing as an impeccable lawyer. They form an elite category of 1% who yield an exemplary influence in the profession like priority of audience etc.

With the recent addition of 37 new advocates, the total strength of practicing Senior Advocates in India now stands at 420²⁹, the procedure for which has been elaborately laid down in order to make this process fair, transparent and devoid of any bias.³⁰ Total number of Advocate of Record in the Supreme Court is 2545³¹, while there is no exact figure on the total number of advocates practicing in India, but the estimated figures on the basis of enrolment suggests it to be nearly 20 lakhs.³²

What a lawyer charges from his client is completely his prerogative, and there are no regulations regarding the same in India. Although there is Advocates fees rules, but they only guide upon the minimum amount. According to the Supreme Court rules 2013, a lawyer may charge a maximum of Rs 8,000 per hearing, but in reality it is just a fraction of what is actually billed. Lawyers usually charge money in accordance to their seniority and standing at the bar. The top lawyers may charge anywhere between Rs 10 lakh and Rs 20 lakh just to make an appearance in the apex court. Every client is quoted the amount in terms of their paying capacity. So, there is never one fixed bracket for a certain type of case, the amount always varies from client to client. A lawyer practicing in any High court would most certainly take anything between Rs 3 - Rs 6 lakh per appearance. And in case the lawyer is expected to run to other courts, then the charges might just go in the brackets of Rs 10 lakh - Rs 25 lakh per appearance. In trial courts, a client is often billed for the entire case as opposed to billing per hearing in the higher courts. The amount although could sometimes be as much as Rs 10 lakh.

The litigation fees in India is quite high and often it is difficult for a middle-class working man to retain a lawyer, for the same reason they often times avoid bringing a matter to court. The courts in India

²⁹ Press Trust of India, New Delhi, Business Standard, 29th March, 2019. Available at: https://www.business-standard.com/article/pti-stories/sc-designates-37-lawyers-as-senior-advocates-119032901066_1.html last accessed on 12 August, 2019.

³⁰ Indira Jaising v. Supreme Court of India, 2017 9 SCC 766.

³¹ As on 1st April, 2019.

³² Available at: <https://www.legallyindia.com/tag/number-of-lawyers> last accessed on July 2019.

are mandated by the Constitution to provide free Legal Aid³³ in the District and High Courts. The Legal Services Authority Act, 1987 ensures setting up of Legal Aid Centers providing free Legal Aid in all courts in India.

Legal assistance from a lawyer is an essential requisite of the procedure established by law. Courts have held that deprivation of Legal Aid is unconstitutional. Although, it is not mandatory to appoint an Advocate in disciplinary inquiries or quasi-judicial proceedings. In fact, the very purpose of creating administrative tribunals was to provide a non-lawyer dispute settlement mechanism. According to Article 19 of the Constitution of India every citizen of India is guaranteed some freedoms containing right to practice any profession or to carry on any occupation, trade or business. Therefore, each and every person holding a certificate of practice has a right to practice law.

The Advocate's Act clearly mentions, the court may allow any person to appear before it even if he is not an advocate.³⁴ Therefore, an individual can defend his/her own case although, this rule is subject to certain exceptions. In fact, the rules of the court which are meant for procedural implementation also do not mandate in appointing an Advocate for defending oneself in the court. These Rules suggest that a person who is not an Advocate is obligated to file an appointment along with an Advocate. There is no unqualified ban to appear and a non-Advocate can appear with the leave of the Court. Nonetheless, lawyers are retained for their knowledge of the law and the procedural formalities to be followed which are beyond the understanding of a layman.

Additionally, an Advocate, not on the Roll of Advocates of that particular High Court can also appear but along with a local Advocate. Such an advocate can also appear by himself, if he moves an application before the court seeking its approval and such approval is generally granted. A paralegal is trained at work through education, training or work experience in order to assist in doing legal work. Such work requires knowledge and workings of the courts and legal concepts. They do not have the requisite educational qualifications to practice law, yet they have the technical know-how, most often learnt by training under an Advocate or in the Court of law. The formalities to file a case are plenty and most often not everything is exclusively done by the lawyers themselves. For such work most lawyer, law

³³ Article 39 of the Constitution of India, 1950.

³⁴ Section 32 of the Advocates Act, 1961.

office, governmental agency or other entity that are authorized by administrative, statutory or court authority to hire paralegals in India are the law clerks hired by Advocate to do the running around and filing of a matter.

2.3.1. Judges in India

Judges in Indian courts are actors of the judicial administration in India. There are various levels of judiciary in India, each having distinct powers and jurisdiction on them which functions on the basis of a strict hierarchy. Appointment and retirement age of judges is different in various levels of the judiciary.

(i) Subordinate Court: A Judicial Magistrate is appointed by a High Court with or without State Public Service Commission. They conduct an exam in three stages. High Court has rights to frame rules regarding the exam, syllabus, qualifying score and everything else associated therewith. Normally, a Law graduate is eligible to appear.

(ii) High Courts: President of India appoints every Judge, on the basis of reference made by the National Judicial Appointment Commission.³⁵ The judges should have had a practice of at least 10 years as an advocate in a High Court or of two or more such Courts in succession. Their retirement age is 62 years and they are eligible to practice in the Supreme Court or any High Court, other than the ones they have been a judge at after retirement.

(iii) Supreme Court: The President of India appoints the Judges of the Supreme Court, but not on his own volition rather on the basis of recommendation made by the National Judicial Appointment Commission³⁶. The members comprises of the Chief Justice of India as ex officio chairperson, two senior most Judges of the Supreme Court as ex officio members, Union Law Minister as an ex officio member, and two other members who are nominated by a committee consisting of the Prime Minister, Chief justice of India and Leader of opposition in the Lok Sabha (Lower House).³⁷ A Judge to the Supreme Court must have been a Judge of a High Court or two more High Courts in succession for five years, or an Advocate of a High Court or two more such Courts in series for at least ten years, or a distinguished jurist.

³⁵ Article 217 of the Constitution of India, 1950.

³⁶ Article 124B of the Constitution of India, 1950 .

³⁷ Article 124A of the Constitution of India, 1950 .

The retirement age for a Supreme Court judge is 65 years and they cannot practice in any court of law post retirement.

2.3.2. *Public Prosecutors in India*

Every State appoints a Chief Public Prosecutor³⁸ to try criminal cases on behalf of the Government. They are appointed at various courts and are appointed by the following criterion:

- (i) An Assistant Public prosecutor is appointed by the State government at the lowest level. It is a non-gazetted position. Small time matters are dealt here at the Magistrate courts. Many a times, they are political appointments rather than appointments of permanent cadre.
- (ii) Additional Public Prosecutor are senior lawyers who have had a standing of at least 10 years at the High Court or in sessions court as a practicing lawyer. They are also known as High Court Government Pleaders and are gazetted officers.
- (iii) Special Public Prosecutor are the top criminal lawyers hired by the State to defend itself at the central or state level or by the law enforcement agencies for that particular case.

2.4. NO SHORTAGE OF LEGAL SERVICES

There is no shortage of legal services in India but despite that, there is a delay in the justice delivery process causing injustice. The pendency can be studied at <https://njdg.ecourts.gov.in/>. Although, e-courts, evening courts, fast track courts and certain quasi-judicial tribunals have been formed yet they too have not been sufficiently successful in bringing down the long-standing pendency of cases.

3. PROCESS AND PROCEEDINGS: OVERVIEW

3.1. CRIMINAL PROCEDURE

In criminal law, any kind of investigation happens subsequent to a crime. There shall be an offence committed under the Indian Penal Code 1860, Code of Criminal Procedure 1973 or under any other special laws in force. The investigation is conducted by the police by the following process:

³⁸ Section 24, Criminal Procedure Code, 1973.

- (i) Reaching the actual spot of occurrence of crime
- (ii) Determining the facts and circumstances of the offence committed.
- (iii) Making an arrest of the offender.
- (iv) Assembly of evidence by investigating those familiar with the crime.
- (v) Search and seizure of necessary evidence.
- (vi) To determine whether the evidence collected against the accused are enough to be presented to a magistrate for trial.

If the First Information Report (FIR) describes the offence as non-cognizable in nature, then the police cannot arrest without a warrant. In cases of cognizable offences (offences of serious nature) a police officer of local jurisdiction is duty bound to register the FIR on the basis of information given by anyone who has knowledge of the offence.³⁹ They may make an arrest without warrant in accordance with the First Schedule or conduct preliminary investigation also.

In case of a Non-Cognizable offence, the police need to take a warrant from the Magistrate⁴⁰, subsequently that case can also be treated as that of a cognizable offence. On refusal to register the FIR, the aggrieved person can approach the S.P./DCP to take cognizance.⁴¹ Subsequently, a Magistrate can be approached stating that no cognizance of the matter has been taken so far.⁴² He can direct the police to take cognizance. Subsequent to the registration of a FIR, evidence is collected by:

- (i) Recording the Statements under section 161 of Cr.P.C
- (ii) Collecting of Evidence in form of Documents and others
- (iii) Recording of confessions or statements under section 164 Cr.P.C before the Magistrate.

Post the evidentiary stage the Police has to file a final report before the Magistrate.⁴³ They may file a closure Report stating lack of formal evidence against the accused. A Magistrate may either accept it or direct further investigation upon the matter or may reject the

³⁹ Section 154 of Criminal Procedure Code, 1973.

⁴⁰ Section 155(2) of Criminal Procedure Code, 1973.

⁴¹ Section 154(3) of Criminal Procedure Code, 1973.

⁴² Section 156(3) Criminal Procedure Code, 1973.

⁴³ Section 173 of Criminal Procedure Code, 1973.

report and issue summons⁴⁴ after taking cognizance of the matter⁴⁵. When the offence is punishable with imprisonment of less than 10 years, the final report shall be filed within 60 days. When the offence is punishable with imprisonment for more than 10 years, life or death penalty, the final report shall be filed within 90 days from the date of the FIR being registered. After this procedure, the trial starts and the police hands over the case to the Public Prosecutor. When the charge sheet is filed before the magistrate, he will direct the accused to be presented before him through a warrant.⁴⁶ A copy of the charge sheet shall also be given to the accused⁴⁷ and the trial will begin. The process of a sessions trial shall be diligently followed by a public prosecutor.⁴⁸ His opening statements shall constitute the elucidation of charges leveled against the accused also called as framing of the charges.⁴⁹ The accused can move an application for discharging him of all the charges on the grounds of falsification of charges or want of sufficient proof or are not strong enough. If the application for discharge is rejected, the court may frame charges, at this stage the court can add or delete any charge if the material available on record does not support the said charge.

Thereafter, the court gives an opportunity to accused to plead guilty upon reading of all the charges against him. If he pleads guilty, he will be directly convicted of the charges framed,⁵⁰ if not, the trial shall commence. There shall be Examination in Chief, Cross Examination and Re-Examination of witnesses of prosecution.⁵¹ It is in accordance to guidelines under Chapter X.⁵² After the completion of evidence on the side of prosecution, recording of statement of accused happens,⁵³ though no oath is administered to him nor can anything he says be used against him. Subsequently, defense witnesses are presented. On the basis of arguments presented and materials placed on record, the Judge decides upon the conviction or acquittal of accused. Upon conviction, the quantum of punishment shall be decided by hearing the accused.⁵⁴ After that, the Judge will give a comprehensive

⁴⁴ Section 204 of Criminal Procedure Code, 1973.

⁴⁵ Section 190 of Criminal Procedure Code, 1973.

⁴⁶ Section 204 of Criminal Procedure Code, 1973.

⁴⁷ Section 207 of Criminal Procedure Code, 1973.

⁴⁸ Section 225 to 233 of Criminal Procedure Code, 1973.

⁴⁹ Section 228 of Criminal Procedure Code, 1973.

⁵⁰ Section 229 of Criminal Procedure Code, 1973.

⁵¹ Sections 230 and 231 of Criminal Procedure Code, 1973.

⁵² Section 136-166 of Criminal Procedure Code, 1973.

⁵³ Section 313 of Criminal Procedure Code, 1973.

⁵⁴ Section 360 of Criminal Procedure Code, 1973.

judgment, recording all the reasons for the punishment of the accused for the offence.

The principle of Rule of Law is essential to all legal and political systems. It reflects the ideals of fairness, equality and non-arbitrariness. In the due course of time, Rule of Law has been held to mean “Due process” which includes a just, fair and non-arbitrary procedure. The procedure mentioned in the previous part of the question reflects just that. Although, it appears to be time consuming and full of procedural technicalities, it was deliberately intended to be made like this so as to protect the rule of law and follow due process amidst that.

3.2. CIVIL PROCEDURE

A civil matter begins with the involvement of two or more parties, where one of them is aggrieved and approaches the court for a specific remedy in the form of compensation, specific performance, injunctions etc. A matter begins with the plaintiff filing a plaint in the court of law. The case is then registered and logged into its records. Thereafter summons is sent to the defendant to appear before the court on the given date. This document is duly signed by the judge with the seal of the court also it contains a copy of the plaint. On courts discretion it may or may not direct the plaintiff to appear on the day of hearing. The defendant has a right to appear before court, either personally or through a representative to respond to the summons by way of a written statement and also to present evidence, documents, pleadings etc. He can also file a counter claim, which is also treated as a plaint, for that the plaintiff shall submit a written statement against the counter-claim.

The first hearing is pertaining to the framing of issues, which can be pertaining to an issue of fact or an issue at law. If no defense is provided by the defendant then no framing of issues takes place and judgment can also be given. If not that, then evidence is given by both plaintiff and defendant and the matter is put to final arguments made by both the parties. Subsequent to which either the court gives a judgment on the same day or within 15 days. If the judgment gets delayed beyond 30 days, then the reasons for the same must be recorded by the court. A judgment essentially contains all the issues and argument to which the court took cognizance. It also comprises of set-off or any other claims to be made by either of the parties. The party winning the matter is referred to as the decree holder and the party against whom a matter is decided is known as the judgment

debtor. The party not satisfied with the decree may file an application for review. Additionally, the aggrieved party may approach an appellate court for appeal. The court on its discretion may accept, reject, or send back the appeal to the appellant for modifications. Upon acceptance of a matter, an application is sent to the lower court to furnish all the relevant records pertaining to the case. Court then hears both the parties and may confirm, vary, or reverse the original decree in its judgment.

The execution of the decree passed by the court happens by way of the judgment debtor paying the money due to the principal debtor in or outside the court. In cases where, the judgment debtor fails to comply by the decree, the decree holder shall file an application for execution of decree. It may be by way of a request to the court to assist him by granting him the relief mentioned in the decree either by delivering the property, arrest or detention of person. Judgment debtor shall be issued with a show cause notice for execution of the decree. In matters pertaining to money, in case of failure to make payment, immovable properties are attached to recover the money.

The Supreme Court in *Afcons Infrastructure Ltd. Vs. Chierian Varkey Construction Co.(P) Ltd*⁵⁵ put down the guidelines for refereeing a matter to mediation during a civil suit. This reference is done often after the completion of pleadings. However, the court may also refer a matter to mediation after framing of issues.⁵⁶ Although the court might not necessarily refer the matter to arbitration, mediation or conciliation, it will do so only if the court feels that there is a possibility of dispute settlement by alternate means. It is essential that parties are refereed to mediation at an appropriate time during the civil proceedings. Power of a judge to refer a matter to alternative modes of dispute settlement is derived from section 89 of Code of Civil Procedure 1908 which is an enabling provision. Order X rule 1-A, 1-B and 1-C of Code of Civil Procedure 1908 are procedural provisions. In certain matters it is required by law to subject such disputes to arbitration or mediation. They include matters pertaining to labor law, family law etc. They allow for parties to be sent to compulsory mediation if there is an element of settlement, at times even when they are not willing. It is governed under the Civil Procedure-Mediation Rules, 2003.⁵⁷

The principle of Rule of Law is essential to all legal and po-

⁵⁵ (2010) 8 SCC 24.

⁵⁶ S. 89 Civil Procedure Code 1908.

⁵⁷ r. 5(f)(iii) of the Civil Procedure- Mediation Rules, 2003.

litical systems. It reflects the ideals of fairness, equality and non-arbitrariness. In the due course of time, rule of Law has been held to mean due process which includes a just, fair and non-arbitrary procedure. The procedure mentioned in the previous part of the question reflects just that. Although, it appears to be time consuming and full of procedural technicalities, it was deliberately intended to be made like this so as to protect the rule of law and follow due process amidst that. In order to make this process easier and expedient, parties have an option of resolving their disputes by alternative means like that of mediation, arbitration and conciliation. Though these processes cannot be resorted to in every matter yet they have helped tremendously in bringing down the escalating pendency of civil matters.

3.3. ALTERNATIVE DISPUTE RESOLUTION

There are certain disputes which are often referred to mandatory mediation, although such recourse is usually not taken.⁵⁸ There are different ways in which a matter is sent to mandatory alternative dispute settlement. In India, as soon as a matter is filed, parties are provided with options to settle their disputes alternatively, without resorting to judicial remedy. This provision is there for two reasons, firstly, to reduce the burden of cases and the increasing of pendency upon the courts and secondly, for a quick settlement of disputes in a time bound manner. The parties are to choose from the options provided for ADR, unless they have been exempted by the court. The following options are available to the parties:

- (i) Court Annexed Mediation is granted by the court itself and is also a part of the judicial system itself. Each court maintains such list, which includes skilled and experienced mediators who are made accessible to the required parties. The court assigns a particular mediator to a matter and also sets a date for completion of mediation. The proceedings are often confidential and the agreement so reached between the parties is considered enforceable as a that of a judgment of the court. All the parties i.e. The litigants, lawyers and judges become partakers in the justice delivery system.
- (ii) Court referred Mediation refers a matter to a particular mediator. It is offered on monetary basis by qualified mediators whose services can be availed by Court, general public Court, general public, private or governmental sectors for dispute reso-

⁵⁸ r. 5(f)(iii) of the Civil Procedure- Mediation Rules, 2003.

lution. Such mediators can also be referred to cases pending trial by the individual parties to reach the stage of mutual settlement. (iii) Contractual Mediation is availed by parties entering into a contract. Contract may also include clause of mediation to resolve any disputes between them. They may also prescribe the procedure for the selection of a mediator or the name of a mutually accepted mediator may be written. The results of such mediation have to be accepted by both the parties, similar to a court decree.

Parties to a dispute may voluntarily decide to pursue mediation by consensus. This can be done at any given point of time. There is no particular pre decided stage for this kind of mediation and a matter can be referred at any time. In *Afcons Infrastructure Ltd. and Anr. V. Cherian Varkey Construction Co. Private. Ltd. and others.*,⁵⁹ the Supreme Court laid down guidelines pertaining to the kind of cases that would be eligible for ADR.

- (i) All matters concerning trade and commerce e.g. disputes arising out of contracts, specific performance, disputes between suppliers and customers or bankers and customers or developers/builders and customers or landlords and tenants/licensor and licensees or insurer and insured etc.
- (ii) Disputes arising out of personal relationship of parties e.g. disputes related to maintenance, custody of children, or disputes involving partition/division of property between family members/co-parceners/co-owner or disputes involving partnership agreements etc.
- (iii) Matters involving a minor hiccup in an otherwise good personal or professional relationship e.g. disagreements between neighbors concerning encroachment or nuisance etc. to their property or matters involving an employer and employee or matters between members of societies/associations/Apartment owners Associations etc.
- (iv) All cases connected to tortious liability which involve compensation in motor accidents/other accidents or other forms of consumer disputes.

The judicial system in Indian is amongst the oldest in the world but due to the miniscule people to judges ratio, the pendency of matters was just piling up on an everyday basis. This situation did

⁵⁹ (2010) 8 SCC 24.

not change despite establishing fast track and evening courts in many states. There was a need to resolve disputes outside the red tapings of the Court. This is where ADR came to use. It can resolve all kinds of disputes ranging from including civil, commercial, industrial and family matters etc. ADR is less time consuming, saves a lot of court visits to the parties, is relatively very cheap. Also, since both the parties mutually agree upon an arbitrator there is no inherent bias involved. Furthermore, it takes away burden of the court and of judges. Advantages for employing ADR in the Indian judicial system can be summed as follows:

- (i) People can resolve their dispute in shorter time.
- (ii) It saves litigation cost and time.
- (iii) It is free from technicalities of courts, and is more expressed, useful and involved.
- (iv) It gives the parties an opportunity of being heard instead of being represented by the lawyers or court, here the parties are in control, they have a say in the final decision.
- (v) There is always more scope for parties coming to a settlement if they are made to sit with each other in an informal setting without the trappings of court. There is scope for restoration of their strained relationship.
- (vi) It prevents any further conflict which only escalates in the court as both the parties are more involved in putting the blame instead of maintaining good relationship with each other.
- (vii) It ensures the best interest of the parties.⁶⁰
- (viii) Arbitrator is not restricted by the strict procedure of the Civil Procedure Code and law of evidence. However, he has to follow the principle of natural justice.

The process of ADR has simplified the long and tedious legal procedure and has made it more litigant friendly. There are no strict legal rules or procedures to be followed, only a broad set of guidelines and are the prerogative of individual arbitrators in the matters assigned to them. This way the parties involved get to focus on the issue at hand instead of which legal intricacies. The primary objective is to resolve the issue in a mutually beneficial. Some creative ways to resolve the matter can also be deployed unlike in a court room where a judge has to strictly adhere to all the procedural guidelines. ADR preserves relationships between the disputing parties involved rather than with

⁶⁰ Russell on Arbitration, Sweet & Maxwell, (London, twenty-first edition, 1997) 9.

one of them going home bitter for losing the legal battle. The success rate of ADR is approximately 85%, which is also indicative of a lot of time and money saved in court appearances. Most importantly, it reduces the stress of having to fight a long and arduous legal battle. The arbitration proceedings are of a more flexible nature. It keeps a dispute private between the parties, unlike in an open court where anyone can witness an ongoing suit.

Having said that, there is a reason why such remedies are not applied to every case or why the moorings of the legal system cannot be completely done away with. In order to restore the rule of law it is imperative to follow the procedure established by law, even if that is at the cost of being expensive, time consuming and increasing the pendency.

4. ACCESS TO JUSTICE, EQUAL ACCESS TO COURT AND FAIR TRIAL

Indian judicial system, resembles the system of Commonwealth nations and follows common law practices. The topic 'access to justice' is well debated and very essential. 'Access to justice' reflects that any one in need of justice should be able to approach court of justice without any inhibitions and Legal Aid should be freely available. But this is very preliminary idea and Access to justice encompasses many other rights. It also includes speedy justice with more than required courts, sufficient number of judges and also fair trial by independent judges who strive to establish rule of law, help the needy with Legal Aid and public interest litigation and so on.

Indians always had contact with the King, beginning from the time of Ramayana and Mahabharata. When the Indian Courts aligned to common law at the time British rule, it was already a part of the system that the general public be allowed accessibility to the law-making machinery, even before we had any written set of law or the present day Constitution. Two interesting cases in the pre-independence era which established the concept of access to justice firmly are discussed below

Bombay High Court rendered an early decision in *Re: Llewelyn Evans*,⁶¹ in which case, Evans was arrested in Aden and transported to Bombay as a suspect for the offence of criminal breach of trust. During which time, Evans' was denied access to his legal adviser. Section 40 of the Prisons Act, 1894 provided that an un-convicted

⁶¹ AIR 1926 Bom 551.

prisoner should be allowed to see his legal adviser in jail, but still the magistrate felt that he had no power to grant access. A pertinent question arose as to whether a person had any access to a counsel during police custody.

Justice Fawcett, who was the presiding judge, referred to the Rawlinson Committee report in England and noted that “the days have long since gone by, when the state deliberately put obstacles in the way of an accused defending himself, as for instance, in the days when he was not allowed even to have counsel to defend him on a charge of felony.” He also referred to S.340 of the Code of Criminal Procedure, 1898 and held that “the right under that provision implied that the prisoner should have a reasonable opportunity if in custody, of getting into communication with his legal adviser for the purposes of preparing his defense”. Justice Madgavkar was also on the bench and he added that “if the end of justice is justice and the spirit of justice is fairness, then each side should have equal opportunity to prepare its own case and to lay its evidence fully, freely, and fairly, before the Court. This necessarily involves preparation. Such preparation is far more effective from the point of view of justice, if it is made with the aid of skilled legal advice – advice so valuable that in the gravest of criminal trials, when life or death hangs in the balance, the very state which undertakes the prosecution of the prisoner, also provides him, if poor, with such legal assistance”.

In India, fair trial rights and equal access to justice legal can also be traced in the mass struggle movement for freedom in modern India when Mahatma Gandhi urged the lawyers to represent the Indians pro bono in courts; as they faced major discrimination and problems due to lack of legal knowledge. Since then, various lawyers and jurists have been advocating the concept of Legal Aid in India. Justice P.N. Bhagwati and Justice V.R. Krishna Iyer deserves a special mention as being two of the major proponents of explicit access to court. In India in the year 1976, 42nd amendment to the Constitution was introduced which brought Article 39A under the Directive Principles of State Policy. In 1987, Legal Services Authority Act was introduced which gives the structure and functions of the Legal Aid functionaries. With the motto of ‘Access to Justice’, it acts as a bridge between the elites and the not so privileged ones to afford equality of opportunity in reality, rather than only on paper. The phrase ‘equal protection of laws’⁶², embedded in the Constitution of India also strikes down any

⁶² Article 14 of The Constitution of India, 1950.

financial roadblocks in the way to equal justice.⁶³

Both constitutional and statutory framework provides a strong foothold for Legal Aid in India which makes it possible to bring the poor and the weak at par with others.

4.1. CONSTITUTIONAL PROVISIONS

Article 39A was added by the 42nd Constitutional Amendment Act, 1976. It explicitly mentions that it is the obligation of the state to provide free and compulsory legal aid by announcing suitable schemes in order to ensure that no person is ever deprived of access to justice just because of the reason of lack of money or any other disability.⁶⁴ Falling under Part IV of the Constitution, this notion found place in the Directive Principles of State Policy. According to Article 38(1), it is the duty of the State to promote the welfare of the people by protecting this right as effectively as it can. Social order encompassing social, economic and political justice should be found in all the institutions of the national importance.⁶⁵

Article 21 that deals with the Right to Life and Personal Liberty⁶⁶ has widened its scope to include the ‘Right to free legal’ as well as the ‘Right to speedy trial’. Article 22(1) of the Constitution requires that a detained person should be given the right to “consult, and to be defended by, a legal practitioner of his choice”⁶⁷.

4.2. STATUTORY PROVISIONS

Gradually, it was realized that in order to remain true to the letter and spirit of the Constitution, something more substantial was required to be done. This was finally done through the introduction of Legal Services Authority Act, 1987.⁶⁸

In 1958, the 14th Law Commission Report suggested outlines for changes in judiciary for speedier and less expensive justice.⁶⁹

In 1971, a committee was constituted under P. N. Bhagwati, J. who observed, “even while retaining the adversary system some changes

⁶³ Equal Protection and Fundamental Rights, Available at: <http://law2.umkc.edu/faculty/projects/trials/conlaw/fundrights.html> last accessed on 15 Dec 2018.

⁶⁴ Art. 39A, The Constitution of India, 1950.

⁶⁵ Art. 38(1), The Constitution of India, 1950.

⁶⁶ Art. 21, The Constitution of India, 1950.

⁶⁷ Art. 22(1), The Constitution of India, 1950.

⁶⁸ Legal Services Authorities Act, 1987.

⁶⁹ Law Commission of India, 14th Report on Reform of Judicial Administration (1958), Chapter. 27(1):587-624.

may be effected where the judges be given participatory role in the trial so for poor, placing them in equal footing with the rich in the Administration of justice". This was followed by the 1973 Krishna Iyer Committee Report wherein Krishna Iyer, J. stressed upon requirement of Legal Aid and fair trial rights

Finally, in the year of 1977, National Judicature Report was submitted which focused on framing of legal service programme taking into consideration, the social and economic conditions which were prevalent in the country at the time. It prescribed the establishment of National Legal Services Authority (NALSA).

Another committee was constituted which came to be known as "Committee for Implementing Legal Aid Schemes". Because of certain inadequacies, the Legal Services Authority Act, 1987 was enacted which came into effect in the year 1995.

Besides a separate legislation, provisions relating to Legal Aid are present in our procedural laws as well, namely Code of Civil Procedure (CPC), 1908 and Code of Criminal Procedure (Cr.P.C), 1973. According to Section 304 of CrPC, "where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader; the Court shall assign a pleader for his defense at the expense of the State."⁷⁰ The State Government has the power to authorized the same provisions to be made applicable to other trials before any other court within the jurisdiction of that state.⁷¹

Similarly, Order 33 of CPC states, "in case of suit by an indigent person, the plaintiff shall not be liable to pay court fee and in case he is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him."⁷² This benefit was earlier in existence for plaintiff but now has been extended to the dependent also.⁷³

Besides the Act, National Legal Services Authority Rules were introduced in 1995 which dealt with the substantive part liking specifying the composition of the institutions like NALSA, conditions of service, term of service, qualifications of people included in Lok Adalats etc.⁷⁴

All these provisions make clear the intention of the legislature that

⁷⁰ S. 304, Code of Criminal Procedure, 1973.

⁷¹ S. 304(3), Code of Criminal Procedure, 1973.

⁷² Order 33. Code of Civil Procedure, 1908.

⁷³ Ibid.

⁷⁴ National Legal Services Authority Rules, 1995.

provides an obligation to the State to secure justice for its citizens, irrespective of any discrimination.

A committee headed by Justice P.N Bhagwati was established in 1949, which had given many suggestions pertaining to the scope, aim and systems of legal aid machinery existing at the time in India.

Later on, in 1958, the 14th Law Commission, under the chairmanship of the then attorney general Mr. M.C. Setalvad had mentioned that the provisions are to be made for helping poor and there should be equal opportunity of access to justice furthermore, in 1971, a board Report prepared under the chairmanship of Justice P.N Bhagwati had categorically mentioned that Legal Aid and advice provided under the scheme is a right and not charity. The Krishna Iyer Committee Report (1973) established that the state has democratic obligation to guarantee that the legal system efficiently meets the ends of social justice The Judicare Committee Report (1977), which included both, Justice Bhagwati and Justice Krishna Iyer as members was established in order to ensure satisfactory and uniform legal services in all states of the country. Committee also drafted legislation for legal services namely National Legal Services Bill, 1977. It stated that an authority to ensure Legal Aid should not be a department of the government. It should be independent institution supervised by the Judge of the Supreme Court which should consists of members from the respective Bar Associations, Government officials, the Parliament as well as NGO or social workers. They also envisaged it to be multi-tier set up.

In 1980, under the chairmanship of Justice P.N Bhagwati, Committee for Implementing Legal Aid Schemes (CILAS), was established by the central government. Its objective was to ensure uniform implementation of legal aid programmes across the country. Hence, the objective or driving force behind the legal aid programme has developed over the course of all these years. Finality was given to this programme by giving it a statutory recognition with the passing of the Legal Services Authorities Act, 1987 ("the Act", hereon) Democratic decentralization - Post-Independent India faced problems of governance. It was facing centralization of legislative, executive or judicial powers. The 73rd and 74th amendment to the Constitution of India paved way for democratic decentralization and established Panchayati Raj institutions. However, the judicial mechanism remained centralized. 230th Report of the Law Commission of India noted that the judges and advocates should serve the cause of litigants.

Hierarchy of institutions which dispense their functions at dif-

ferent levels be it at national level - National Legal Services Authority (NALSA), at the state level - State Legal Services Authority at the State level or at the district level - District Legal Services Authority. Further, committees are also established like Taluk Legal Service Committee, High Court Legal Service Committee and Supreme Court Legal Service Committee which act in co-ordination with and under the directions of their respective authorities. A detailed overview is given below⁷⁵.

National Legal Services Authority (NALSA) is constituted by the Central Government. Its functions are:

- To ensure that general people are made aware of their rights by conducting legal literacy awareness programmes.
- Encourage disputes resolution by Lok Adalats, negotiation, arbitration and conciliation.
- State & District Authorities to be provided a designated fund.
- Lay down policies and formulate effective schemes.
- Coordinate, monitor and direct functioning of all authorities and committees below it.
- Formation of Legal Aid clinics in universities which comprises of law colleges & national law schools.
- To conduct programmes for the development of clinical legal education and Undertake & promote research.

State Legal Services Authority is founded by the State Government. Its functions are:

- Give legal service to eligible people.
- Duty to promote policies & direction of Central Authority.
- Carry on preventive Legal Aid programmes.
- Conduct Lok Adalats

District Legal Service Authority is instituted by State Government for every District in the State. It is tasked with the following objectives:

- Duty to complete all the functions which are delegated by the State Authority in the District
- Harmonize measures being taken at the Taluk level Legal Services Committee with other Legal Services Committees in

⁷⁵ Suchitra Yadav, "Issues in implementation of free Legal Aid schemes – Critical Analysis of Art 39A of the Constitution of India", available at: <https://blog.ipleaders.in/article-39a/> (Last accessed November 4, 2018).

the District.

Supreme Court Legal Service Committee is constituted as Central Authority to act in coordination with universities and law schools to promote Legal Aid services for the needy. High Court Legal Service Committee State Authority of each High Court has functions as follows: To collect and examine applications made for the purpose of legal aid determine all criterions are fulfilled before granting or rejecting the grant of legal aid.

- To control the implementation of the Legal Services programme.
- To formulate and provide documents containing information pertaining to the returns filed, reports submitted and statistical information provided in respect of the legal services programme of the State Authority.
- To keep a panel of advocates and senior advocates in reserve in the High Court for providing legal aid and also to determine sanctioned expense to be incurred.

Taluk Legal Service Committee is constituted by State Authority for each taluk/ mandal / group of taluks or mandals with the following objective:

- Conduct Lok Adalats within the Taluk
- Coordinate ongoing events of legal services at the Taluk level
- Perform functions assigned by the District Authority

Sections 19 to 22 of the Act provide for Lok Adalat as it is another method of Alternate Dispute Resolution (ADR) mechanism. This promotes amicable settlement of dispute pending at the pre-litigation stage. Such cases will only go to the Lok Adalat only with the consent of both the parties and connivance of the judge. An award given by the Lok Adalat shall be construed as final and it shall be made binding on both the parties.⁷⁶

Law, if stagnant cannot meet the demands of a dynamic society. When it was realized that the Lok Adalats were not completely effective and was leading to delay in the disposal of cases, changes were affected through the Legal Services Authorities (Amendment) Act, 2002.⁷⁷ It substituted 'Lok Adalat' with 'Permanent Lok Adalat' and incorporated some related provisions in the form of Section 22A

⁷⁶ S.19-22, Legal Services Authorities Act, 1987.

⁷⁷ Legal Services Authorities (Amendment) Act, 2002.

to 22E. Another recent amendment introduced two new eligibility criteria for availing Legal Aid, that of transgenders and senior citizens below a particular income. This seems to be a good step forward as the Act is becoming all-inclusive and taking into consideration any group which might be socially or economically backward.

4.3. JUDICIAL EXPANSION

The words ‘Legal Aid’ and ‘ustice’ may have wide and varied connotations but the idea of Legal Aid evolves from the idea of justice. The Indian Courts have actively participated in establishing a uniform system to Legal Aid involving equal access to justice while interpreting its provisions, practical intricacies, procedures and impediments. The Courts have expanded the scope of Legal Aid through various judgments. This issue drew attention of the Apex Court of India in a petition was filed in the year 1979. The petition was filed collectively in the name of Hussainara Khatoon⁷⁸ and related to those prisoner’s conditions who were being incarcerated in Bihar Jail and while their suits were still pending in court. The court ordered the release of such prisoners with immediate effect and opined that State cannot take away the constitutional right of speedy trial of an accused on the basis of financial restraints In *Khatri & Ors. v State of Bihar & Ors.*⁷⁹, it was held that there is an obligation on the Session Judge or the Magistrate, before whom an accused appears, to inform the accused about his right to access to justice and if the accused is unable to provide for his own legal counsel for reasons of poverty or destitution, the state will make it accessible to him at its cost.

According to the decision in *Sheela Barse v Union of India*,⁸⁰ Article 39-A imposes an obligation upon the State to ensure promotion of equality of opportunity to avail justice. In *M. H. Hoskot v State of Maharashtra*,⁸¹ Krishna Iyer, J. held that the most essential ingredient to fair procedure is seeking a counsel’s advice. It said that it is the responsibility of the state to provide conditions conducive to fair trial and it is not a charity the state is doing.

In the infamous case of *Ajmal Kasab v State of Maharashtra*,⁸² in spite of the fact that grave charges were made against the accused, the court still held the view that it is the obligation of the magistrate or

⁷⁸ Supra note 8.

⁷⁹ (1981) 1 SCC 635.

⁸⁰ (1986) 3 SCC 596.

⁸¹ 1979 SCR (1) 192.

⁸² (2012) 9 SCC 1.

the judge to make available equal access to justice In State of Maharashtra v Manubhai Pragaji Vashi & Ors.,⁸³ the apex court reiterated that it is the duty of the State to ensure free and fair trial for an accused (if he so needs), failing which would vitiate the trial.

4.4. FUNCTIONARIES TO PROVIDE ACCESS TO JUSTICE

In Sampurna Behrua v Union of India,⁸⁴ this case was pertaining to the complaint that Child Welfare Committees were not formed and juvenile justice boards were non-operational, or were not established in accordance to the Act in many districts. The courts directed the State Legal Services Authorities to coordinate with the above two organisations and ensure that their working and functioning is in accordance to that of the given in the Act.

In Kalaben Kalabhai Desai v Alabhai Karamshibhai Desai,⁸⁵ the court enumerated that in order to provide access to justice to all it needs cooperation from all members, including lawyers and judicial officers whose duty it is to inform women and children about their right to free Legal Aid.

In Laxmi v Union of India,⁸⁶ the court enumerated that in cases of acid attack, it is the responsibility of the chief Secretaries of the States and the Administrators of the Union Territories to guarantee obedience of the orders issued by it.

4.5. LOK ADALATS

In Jatavath Sali v Mandal Parishad Development officer,⁸⁷ it was held that Legal Services Authority exercises a semi-judicial functionality wherein the disputed questions cannot be resolved by Lok Adalats. In such cases, parties should invoke a proper remedy instead of just referring the matter. In PT Thomas v Thomas Job,⁸⁸ it was enumerated that awards of Lok Adalat's are also referred to as the decision of the court, only the means of reaching it have been by simpler means i.e. by conciliation.

In State of Punjab v Jalour Singh and others⁸⁹, it was held that when the order of Lok Adalat doesn't talk about any settlement

⁸³ 1995 SCC (5) 730.

⁸⁴ (2011) 9 SCC 801.

⁸⁵ AIR 2000 Guj. 232.

⁸⁶ (2014) 4 SCC 427.

⁸⁷ 2006 (2) ALT 217.

⁸⁸ (2005) 6 SCC 478.

⁸⁹ (2008) 2 SCC 660.

between the parties, as no compromise has been reached. Instead it either asks the respondent to ensure payment, if he agrees to the order or appeal to high Court, then it is not an award of Lok Adalat. If the parties want to challenge an award based on settlement, then it can only be done under article 226 or 227 of the Constitution, on some specific grounds. In such a case, the High Court should hear and dispose off the appeal on merits.

In *Abul Hassan and National Legal Services Authority v Delhi Vidyut Board & Ors.*,⁹⁰ it was held that permanent Lok Adalat should be established which would be in the interest of the people and should be held regularly in order to fulfil the purpose for which the Act has been enacted.

In *Chaluvadi Murali Krishna v District Legal Service Authority, Prakasam District, Ongole*,⁹¹ the court held that section 19(5)(ii) and 20(2) provides jurisdiction to the Lok Adalats, even when the matter has not been referred by the court. It was also held that the Lok Adalats are sufficient to handle cases at pre-litigation stage. Thus, an award by Lok Adalat was held to be proper and valid.

4.6. IMPEDIMENTS

'Equality before Law' and 'Equal Protection of Law' are the guiding principles forming the very spirit of the 'Rule of Law' which is deemed to be the foundation of the notion of 'justice' and 'delivery of justice'. Though the law of the land and judicial decisions categorically equates justice with equality, fairness and respect for individual's rights, the harsh reality still remains that the legal representation comes as a costly affair and is beyond the reach of many, particularly who need it most. As mentioned above, access to the legal system is available to all and the State should undertake all the measures to ensure the same. But, in practice, the access is limited and those who cannot afford it are provided with some form of assistance, which often turns out to be of limited effect.

These are classified mainly into formal and informal barriers. While the formal barriers are the technical and structural barriers, the informal barriers are varied but they generally have a direct impact on the efficiency of the system of Legal Aid.

⁹⁰ AIR 1999 Del. 88.

⁹¹ AIR 2013 AP 41.

4.6.1. Formal Barriers

(i) **Procedural and Structural: Legal Aid / Fair Trial in India** is looked after by National Legal Service Authority, which provides a structure of Legal Aid system in the country. The Legal Aid cells/clinics/centers are established under this Act only. Providing a separate structure and procedure does enable a pro bono system but the need of the time is to create a society where everyone becomes a part of this system and not only the empaneled lawyers. This can be made possible by making it mandatory for every member lawyer of the Bar Association to take up a specific number of pro bono cases annually. System of Access to Justice in India lacks such provision. Synchronization of Legal Aid Centers State-wise is also important to maintain a uniformity which is not in practice.

(ii) **Legal:** In the cases where the person seeking Legal Aid is not a direct party to the proceedings, i.e. the person whose interests will not be affected from that proceeding, if not represented properly, the right to avail free Legal Aid is not available.⁹² Strictly going by the eligibility criterion of the LSA Act, 1987, even the people who have adequate means to access justice can avail Legal Aid. This causes an increase in the number of cases of free Legal Aid, thereby increasing avoidable burden upon the Legal Aid Authorities and consequently decreasing the opportunity for actual needy persons.

(iii) **Economic:** It is true that lawyers taking the Legal Aid work are motivated to make the society a better place to live but they need proper financial remunerations by the government for doing the work dedicatedly. The salaries of the lawyers in the Legal Aid panel are much lesser than the salaries fixed for public prosecutors. Not only this, the minimal salaries which are provided are not paid in time. Further, the economic barriers are not limited to the salaries but also to other aspects like maintaining and updating the registers and records and also keeping a separate staff to administer monitoring committees which are equally important as the lawyers representing the people in the courts.

(iv) **Lack of Physical Infrastructure:** Non-availability of space and rudimentary infrastructure is a critical reason for the lackadaisical functioning Legal Aid Cells. This emerged as an ubiquitous problem both in large metropolitan cities and also in the

⁹² Police and You (Know your right) Commonwealth Human Rights Initiative, Available at: <http://humanrightsinitiative.org/publications/police/legal.pdf> (Last accessed 15 Dec 2018).

smaller towns. The issue that came to light was that there were often no dedicated space, no dedicated official and most often even basic furniture like chairs and cupboards were non-existent. Most of the lawyers entrusted with the task of Legal Aid also pointed out that many a times they used their chambers for the work of Legal Aid.

4.6.2. *Informal Barriers*

(i) **Social:** Deficient awareness is one major barrier. It is evident by the provisions that in our country access to justice is available to almost every strata of the society, but a few of them avail these services due to lack of sensitization. It is the duty of the State to create more awareness among the common public about the services which can be availed from Legal Aid and all have right to fair trial.

(ii) **Lack of Digitization:** Digitization, in Legal Aid sector, will definitely bring more efficiency into the system.

(iii) **Obscure Legal Aid Cells:** Non-visibility and less approachability of the Legal Aid Cells is the major impediment to the disposition of Legal Aid and Fair trial effectively. The centers to provide access to justice known (Legal Aid cells) are located at isolated places which are less approached by the common man, often the one who requires Legal Aid to the maximum. Secondly, being situated inside the educational institutions, the indigent person and illiterate fail to enter such premises due to social stereotyping and basic inhibition

(iv) **Non-coordinated working of the Legal Aid Cells with Civil Society:** There is a severe disconnect between the Legal Aid Cells and the social needs of the society. For any Legal Aid service to be effective, it has to have a holistic approach regarding delivery of services meaning thereby that people and communities which have a fear of facing social exclusion, in order to avoid that, they should be included as significant stakeholders. Therefore, various NGOs, social agencies and public interest groups working towards the upliftment of the downtrodden, disadvantaged, marginalized should be meaningfully collaborated with the Legal Aid Cells.

(v) **Lack of Expertise of the Lawyers:** Legal Aid Cells lacked sufficient expertise to provide legal advice in such cases. Lack of accountability of the lawyers regarding their availability at the Legal Aid Cells and correctness of the legal advice provided is another issue held accountable if they are not dealing with their

case properly.

(vi) Geographic disadvantage: The term ‘urban’ is defined by the Census of India as a settlement center of 5,000 or more people. However, a measure based exclusively on population size of a settlement is not necessarily a correct reflection of its advantage/disadvantage in terms of access to justice. The approachability/inaccessibility can be understood as accessibility to central places or service centers (in the present case, Legal Aid Cells) based on road distances. The question of inaccessibility and approachability, like other considered disadvantages, should be viewed in relative terms. Number of studies, at macro and micro levels, have been conducted.

(a) Dr. Kalpesh Kumar L Gupta Assistant Professor - Research kgupta@gnlu.ac.in April 11, 2019 1 Issues & Challenges in Legal Aid & Pro-bono Work, The Way Forward.

(b) Prof Jeet Singh Mann A Study of Law School Based Legal Services Clinics (2011)

(c) Prof. Jeet Singh Mann, Impact of Competency & Commitment of the Legal Aid Counsels of the Legal Aid System in the City of Delhi. Conducted Empirical Research under the UGC Research Award in 2014.

(d) Prof. Kanwal DP Singh Analysis of functioning of Legal Aid cells in various law schools/universities/departments/ private universities submitted to Department of Justice, Government of India.

(e) “Cross Examination Is Not Child’s Play, Purpose of Legal Aid Is Not to Provide Platform for Young Lawyers” the Gujarat High Court has termed the system of providing Legal Aid to the poor litigants as ‘a farce.’ This harsh observation was made by the division bench comprising Justice J B Pardiwala and Justice A C Rao in a judgement setting aside the death penalty awarded to a woman for double murder.⁹³

5. LEGAL AID SYSTEM

Legal Services Authorities Act, 1987 came into existence on 9th November, 1995 with the objective to lay down goals and means to make legal services available to everyone in accordance to the provisions of the Act. The National Legal Services Authority (NALSA) was created to further the same objective. Additionally, the Supreme

⁹³ State of Gujarat v/s. Manjuben (Guj HC,8/03/2019)

Court Legal Services Committee was also instituted to manage and implement the legal services programmes pertaining to matters of that court.

Furthermore, a State Legal Services Authority was formulated in every state, in addition to a creating a High Court Legal Services Committee. At the local level, District Legal Services Authorities and Taluk (Sub-Division) Legal Services Committees have been created to effectuate proper implementation of directives given by NALSA.

5.1. HISTORY OF LEGAL AID

The Constitution of India provides that every citizen has Fundamental Right to life and liberty which cannot be taken except in accordance with procedure established by law; Fundamental Right to life means right to lead life in dignified manner.⁹⁴

Additionally, the constitution also mandates to provide prisoners with the right to be represented through a legal practitioner during their trial.⁹⁵

The same has been directed to the state to ensure that “the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic or political, shall inform all the institutions of the national life”⁹⁶

The constitution further directs the State “to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free Legal Aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”.⁹⁷

Sections 12 and 13 of the Legal Services Authorities Act, 1987 deal with entitlement to get legal services under the Act.

In *State of Maharashtra v. Manubhai Pragaji Vashi*,⁹⁸ the apex Court has categorically stated that failure to provide free Legal Aid to an accused by the State unless expressly refused by the accused, would vitiate the trial.

<https://www.livelaw.in/news-updates/purpose-of-legal-aid-is-not-to-provide-platform-for-young-lawyers-> last accessed 18 Oct 2019.

⁹⁴ Article 21 of the Constitution of India, 1950.

⁹⁵ Article 23 of the Constitution of India, 1950.

⁹⁶ Article 38 (1) of the Constitution of India, 1950.

⁹⁷ Article 39-A of the Constitution of India, 1950.

⁹⁸ 1995 SCC (5) 730.

In *M.H Hoskot v. State of Maharashtra*,⁹⁹ Justice Krishna Iyer opined that providing free Legal Aid is the State's responsibility and it should not be misconstrued as charity of the Government.

The idea of legal aid scheme was first coined by Justice P.N. Bhagwati when he was the chairman of the Legal Aid Committee, which was formed in 1971. He said that "legal aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to resort to for enforcement of the rights given to them by law."

This recommendation was Accepted in 1976 by incorporating Article 39-A as Directive Principles of State Policy by the 42nd Amendment Act of the Constitution.

To further the same objective, the GOI appointed a Committee for Implementing Legal Aid Schemes (CILAS) in 1980 with Chief Justice P.N. Bhagwati as its head to oversee and ensure implementation of Legal Aid programs being uniformly applied in all the states and union territories.

Later, GOI formed an expert committee under the chairmanship of Justice Krishna Iyer in 1973 to oversee the implementation of legal aid schemes in various states. The committee came up with methodical and intricate hierarchical means on how to establish Legal Aid committees in each district, at state level and at the Centre. It was also recommended to establish an autonomous body to oversee setting up of law clinics in Universities and law schools and lawyers be requested to help.

Furthermore, the GOI appointed a committee on judicature under the chairmanship of Justice P.N. Bhagwati to successfully overlook the implementation of the Legal Aid schemes. It advocated for establishing Legal Aid camps and Nyayalayas in rural areas. The committee, in its report suggested to introduce the idea of Legal Aid in the Constitution via a constitutional amendment.

In order to give statutory backing to Legal Aid system in the country, the Government enacted the Legal Services Authorities Act, 1987 to constitute legal services authorities from Taluk level (sub-division level) to Supreme Court level.

Legal services in the past were every so often led by altruistic and humanitarian concerns for the deprived and underprivileged. These guiding factors were now given a new lease by emphasizing on the

⁹⁹ 1978 AIR 1548.

idea that legal aid is given with the objective to promote equality amongst all, drawing inspiration from Universal Declaration of Human Rights. Free Legal Aid to the deprived and disregarded is now regarded as an instrument to empower such people to use the power of the law to advance their rights. This paradigm change in the perception of Legal Aid has assumed great significance since the inception of the legal services institutions in the country.

Therefore, the idea of providing free and compulsory legal aid fulfills the objectives of the preamble to securing socio-economic and political justice for all citizens. Article 14, 22 (1) and 39A ensures that such an objective is achieved.

The legal Services Authority Act ensures to establish a uniform network across the nation for providing free and competent legal services to the marginalized sections of the society. Thus, the right to legal services has become the fundamental right of the marginalized sections of the society. The safety offered by law for the deprived, uneducated, uninformed and weak is imperative to safeguard equal justice. Legal aid is one of the means to ensure that the opportunities for safeguarding justice are not being taken away from any person because of his poverty, illiteracy, etc.

Justice Bhagwati emphatically observes: “the poor and the illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts.”¹⁰⁰

Recognizing the importance of Legal Aid movement, Justice V. R. Krishna Iyer has opined that the “spiritual essence of a Legal Aid movement consists of inviting law with a human soul: its constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent, and the dispensation of social justice through the legal order”.¹⁰¹

5.2. LEGISLATIVE FRAMEWORK FOR LEGAL AID

Sections 12 and 13 of the Legal Services Authorities Act, 1987 deal with entitlement to get legal services under the Act. Various states have an income bracket, anyone with an annual income lower than the specified amount is eligible to get the benefits of Legal Aid for the district courts or High Court of that State. To avail the benefit

¹⁰⁰ Legal Aid Committee formed in 1971.

¹⁰¹ Government of India, Ministry of Law, Justice and Company Affairs, Report of the Expert Committee on Legal Aid – Processual Justice to the People’s, May 1973, Para 5, p. 10.

of Legal Aid while approaching the Supreme Court, a person should have an annual income of less than 5 lakh.

Right to Legal Aid has been set out in the Constitution and Legal Services authority Act, 1987. In addition to that, the Supreme Court on various occasions have opined and interpreted various principles of the law for the benefit of the poor, illiterate and needy.

5.3. INSTITUTIONAL FRAMEWORK FOR LEGAL AID

National Legal Aid Service Authority (hereinafter, NALSA) has been constituted by the Indian Government so as to ensure conferment of powers are exercise of functions in accordance to the Legal Services Act.

The Chief Justice of India is the Patron-in-Chief of NALSA. The senior most judge of the Supreme Court is the Executive Chairman. At the State level the Chief Justice of the High Court is the Patron-in-Chief of State Legal Services Authority and Senior Most Judge of the High Court is the Executive Chairman. There is also an office of Member Secretary at State level. The District Legal Services Authorities are headed by the District Judge as the Chairperson.

NALSA is required to coordinate and oversee the workings of all legal services institutions in the country. NALSA provides funds to State Legal Services Authorities for operation of all legal services programmes including offering free and competent legal services to all eligible categories of persons under the Act.

India has a total of 36 State Legal Services Authority which constitutes various state's and Union territories. They have in turn formed 46 High Court Legal Service Committee. They have been further sub divided into 679 District Legal Services Authorities (DLSA's) for local governance.¹⁰²

- At National Level -- National Legal Services Authority
- At State Level -- State Legal Services Authority
- At the Supreme Court -- Supreme Court Legal Services Committee
- At High Court Level -- High Court Legal Services Committee
- At District Level -- District Legal Services Authority
- At Taluk Level -- Taluk Legal Services Committees.¹⁰³

¹⁰² National Legal Service Authority, India, *Available at:* <https://nalsa.gov.in/dashboard> last accessed 12 Nov, 2019.

¹⁰³ National Legal Service Authority, India, *Available at:* <https://nalsa.gov.in/about-us/organogram>. Last accessed 12 Nov 2019.

Any person who fulfills the eligibility criterion can apply to the concerned legal services authority by filling the form designated for the same stating his reasons.

For an illiterate or person with any kind of disability who cannot fill the form or write an application, any officer of the legal services Authority/Committee shall can record his reasons on his behalf and take his signature or thumb impression which can later be treated as his application.

A paralegal volunteer are trained to provide any kind of assistance to a person in need while filling the application form.

For this purpose, a State Legal Services Authority has been established with the Chief Justice of the High Court as the Patron-in-Chief and the senior most judge of the High Court as the Executive Chairman in every state. There is a Member Secretary for each SLSA. In every High Court, a High Court Legal Services Committee has been instituted with a judicial officer as the Secretary. At the District level, District Legal Services Authorities have been constituted with the District Judge as the Chairman of the District Legal Services Authority and a senior judicial officer as the Secretary of the District Legal Services Authority. Similarly, at the Taluka level, Taluk (Sub-Division) Legal Services Committees have been constituted. Supreme Court Legal Services Committee has been established to manage and run the legal services measures, which to the Supreme Court of India.

Access to justice is not just about providing accessibility of courts to the needy or providing them with legal representation rather it is to ensure that an equitable and justiciable result comes out. Democratic governance is diluted when this access to justice is absent for all citizens. Hence, NALSA is spreading awareness about the existence of free legal aid service to the poor and vulnerable and also spreading awareness for legal literacy and to take the responsibility of social and economic justice litigation for people belonging to diverse backgrounds irrespective of their age, caste, gender, religion etc. The client community in India have no involvement whatsoever in the governance of Legal Aid. This task is solely looked after by the legal community.

5.4. LEGAL AID BUDGET

The Legal Aid schemes and programmes, as provided in the Act are wholly funded by the Government. The source of Legal Aid funding is the Law and Justice department which provides an annual budget to NALSA and SLSA, they are then further allocated to dis-

tricts upon their requirements.

There shall be a National Legal Aid Fund, established by the Central Authority and the funds credited thereto by the following sources¹⁰⁴:

- (i) Money given as grants by the Central Government;
- (ii) Any grants or donations that may be made to the Central Authority by any other person for the purposes of this Act;
- (iii) Any amount received by the Central Authority under the orders of any Court or from any other source.

The funding for Legal Aid comes from the allocation of funds to the Department of Law and Justice. Budget Allocations for the following years were available

Chart 03. Budget 2015-2016

Budget Estimates of NALSA	Rs.145 Crores
Revised Estimates	Rs.93.34 Crores
Grant received from Ministry of Law & Justice	Rs.67.97 Crores
Grant released to SLSA/SCLSC etc.	Rs.60.30 Crores
Other Expenses	Rs.35.72 Lakhs
Total Expenses	Rs.60.66 Crores

Source: National Legal Services Authority Annual Report 2015-2016¹⁰⁵

Chart 04. Budget 2016-2017

Budget Estimates of NALSA	Rs.142 Cr.
Revised Estimates	Rs.83.95 Cr.
Grant received from Ministry of Law & Justice	Rs.63.67 Cr.
Grant released to SLSAs/SCLSC etc.	Rs.110.09 Cr.
Other Expenses	Rs.2.92 Cr.
Total Expenses	Rs.113.01 Cr.

Source: National Legal Services Authority Annual Report 2016-2017¹⁰⁶

¹⁰⁴ Section 15 of the Legal Services Authorities Act, 1987.

¹⁰⁵ National Legal Services Authority Annual Report 2015-2016, "Annual Accounts of National Legal Aid Fund And Audit Report of the Comptroller and Auditor General of India New Delhi for 2015-16, Available at: https://drive.google.com/file/d/1XQ8d4NBfETmdAPY__W4F-d7GN1tPvbLjq/view last accessed Nov 15, 2019

¹⁰⁶ Available at: <https://drive.google.com/file/d/10z2WoQZY5XUvDQH2VV1jalFBRV7I-min/view> last accessed on 15 Nov, 2019.

5.5. LEGAL AID PROVIDERS

All the practicing Advocates, Administrative and judicial members of a Court automatically become members of the State or taluka/district Legal aid authorities. No additional qualification is required. Young lawyers are often more interested in providing legal assistance to the needy but having said that, there is no documentary evidence to prove the same.

Lawyers who are engaged by the state for legal assistance are paid per appearance and the remuneration for the same are different in different states. There is no uniformity of remuneration throughout the country. Just like in an independent practice, an advocate is given complete autonomy over the matter allotted to him with just one caution, that at all times he must be acting in the best interest of the party that he is representing. Lawyers are often encouraged to attend seminars/workshops briefing about the importance of legal aid, its advantages and how to address the needs of his client without any bias regarding their social or financial status in the society.

5.6. QUALITY ASSURANCE

At the district level, the judicial officers who are members of SLSA identify Advocates with a good practice and engage them to become amicus in matters concerning indigenous persons. There is no universal accreditation scheme in India set in place to identify good lawyers. The Legal Services Institution can withdraw any case from a panel lawyer during any stage of the proceedings if they are not satisfied with his work.¹⁰⁷

Outside agencies can partner and take part in the activities of NALSA in spreading legal literacy and awareness along with independent lawyers interested in pro bono work. Although, there is no quality assurance procedure or system to ensure a good job being done by the Legal Aid providers. The client, have an option to file an official complaint, if they feel that the lawyer is not engaged in their matter or is not acting in their best interest or is not keeping the wishes of the client.

Regulation 8 (17) states that a panel lawyer can be removed from a case, if at any time it is found that he is not performing at a reasonably satisfactory level required of an advocate in such a scenario. A person can also institute a formal complaint, if they are not satisfied

¹⁰⁷ Regulation 8 (14) of the National Legal Services Authority (Free and Competent Legal Services) Regulations 2010.

with the conduct of lawyer assigned to him. Such an application shall be made to the authority instituting such an advocate by the following ways:

- (i) writing a letter or an application;
- (ii) writing an email at nalsa-dla@nic.in;
- (iii) accessing the “Grievance Redressal” option on NALSA website (<https://nalsa.gov.in/>) or any other website of the authority that assigned the lawyer.

5.7 CIVIL AND CRIMINAL LEGAL AID

5.7.1 *Scope of criminal legal aid*

Every person has a constitutional right to be given reasons for his arrest and shall also not be denied access to a legal counsel of his choice¹⁰⁸. Under this provision, a person can claim legal assistance as a matter of his right, the same shall be done by filing an application to the concerned authority stating the grievances suffered and the relief being pursued. The same shall be attached with an affidavit which shall specify the eligibility criterion of the accused to avail legal aid.¹⁰⁹

The following authorities can be approached by the accused on the basis of territorial jurisdiction and the subject matter jurisdiction:

- (i) Taluk Legal Services Committee which is in the premises of the Court in that Taluk; or
- (ii) District Legal Services Authority which is in the premises of the District Court in the District Headquarters; or
- (iii) The concerned State Legal Services Authority (for particular cases, panels of which are maintained at State level);
- (iv) The High Court Legal Services Committee which is in the premises of the concerned High Court; or
- (v) The Supreme Court Legal Services Committee for cases before the Hon’ble Supreme Court.

Each District Legal Services Authority, High Court Legal Services Committee and State Legal Services Authority has a front office where an application can be moved. One can even access and apply on the online portal of NALSA (<https://nalsa.gov.in/>) or the

¹⁰⁸ Article 22 of the Constitution of India, 1950.

¹⁰⁹ Section 12 of the Legal Services Authorities Act, 1987.

website of the State Legal Services Authorities. Legal assistance is also available to those who are not looking at litigating their matter. For illiterate persons courts appoint Para Legal Volunteers who basically help in explaining the legal paraphernalia to the uninitiated.

Free legal aid includes legal assistance of any kind in both civil and criminal matters or before any tribunal for the underprivileged and disregarded people, who don't have sufficient means to get legal representation for themselves. Legal assistance is available to an individual during any stage of a criminal or civil matter. It can be availed by any person in need. Once the legal service authority has verified the genuineness of a case, it can be availed from the lowest court leading up to the Supreme Court. There is no bar to any kind of cases, or to which party needs representation, can be availed by both petitioner and respondent.¹¹⁰ These services are governed by Legal Services Authorities Act, 1987 and headed by the National Legal Services Authority (NALSA). The following services are offered:

- (i) providing advocate for legal representation in legal proceedings;
- (ii) payment of any kind of expense incurred ranging from process fees, expenses of witnesses and any other charges payable or incurred in connection with the court proceedings;
- (iii) doing all the groundwork, ranging from preparing a brief, pleadings, memo of appeal, paper book including printing and translation of documents;
- (iv) drafting of legal documents, special leave petition etc.
- (v) supply of certified copies of judgments, orders, notes of evidence and other documents in legal proceedings.

Free legal aid also consist of giving aid and advice to the beneficiaries of the welfare statutes and schemes framed by the Central Government or the State Government. "Legal Services" comprises of providing any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.¹¹¹

Woman are eligible to avail free Legal Aid regardless of their income or financial status.¹¹² Similarly, a child till the age of majority i.e. up to 18 years can avail benefits under this scheme.¹¹³ The rules

¹¹⁰ Section 13 (1) of the Legal Services Authorities Act, 1987.

¹¹¹ Section 2(c) of the Legal Services Authorities Act, 1987.

¹¹² Section 12(c) of the Legal Services Authorities Act, 1987.

¹¹³ Section 12 (c) of the Legal Services Authorities Act, 1987.

stating the eligibility criterion of senior citizens are framed by the respective state governments. No provision for legal assistance has been provided for witnesses, though, a victim a crime is a witness in their own matter. Legal assistance is provided for such victims. So technically, legal assistance is available for witnesses too but is restricted to the ones who are victims to a crime and are witnesses in their own matter.

5.7.2. Eligibility criteria for Civil and Criminal Legal Aid

The benefits of legal aid can be availed by the following people¹¹⁴:

- (a) any person belonging to either the scheduled caste or the scheduled tribe;
- (b) any victim of human trafficking or beggar referred to under Article 23 of the Constitution;
- (c) any woman or child;
- (d) a person who is mentally unstable or a disabled person;
- (e) any person who had faced circumstances of undeserved want, like a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) a workman working in an industry; or
- (g) anyone in a custody, either of a protective home¹¹⁵; or in a juvenile home¹¹⁶; or in a psychiatric hospital or psychiatric nursing home¹¹⁷; or
- (h) any person having of annual income less than the amount declared in the following schedule (or any other higher amount as may be prescribed by the State Government), if the case is before a Court other than the Supreme Court, and less than Rs 5 Lakh, if the case is before the Supreme Court¹¹⁸. The Income Ceiling Limit under the Act is different in different states, it is explained in detail in the table given below:¹¹⁹

¹¹⁴ Section 12 of the Legal Services Authorities Act, 1987.

¹¹⁵ Section 2 (g) of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956).

¹¹⁶ Section 2 (j) of the Juvenile Justice Act, 1986 (53 of 1986).

¹¹⁷ Section 2 (g) of the Mental Health Act, 1987(14 of 1987).

¹¹⁸ 12(h) of the Legal Services Authorities Act, 1987.

¹¹⁹ National Legal Services Authority, *Available at*: <https://nalsa.gov.in/faqs> last accessed 20 Nov, 2019 .

Chart 05. Income Ceiling Limit

S. No.	States/Union Territories	Income Ceiling Limit (Per Annum)
1.	Andhra Pradesh	Rs. 3,00,000/-
2.	Arunachal Pradesh	Rs. 1,00,000/-
3.	Assam	Rs. 3, 00, 000/-
4.	Bihar	Rs. 1,50,000/-
5.	Chhattisgarh	Rs. 1,50,000/-
6.	Goa	Rs.3,00,000/-
7.	Gujarat	Rs.1,00,000/-
8.	Haryana	Rs. 3,00,000/-
9.	Himachal Pradesh	Rs. 3,00,000/-
10.	Jammu & Kashmir	Rs. 1,00,000/-
11.	Jharkhand	Rs. 3,00,000
12.	Karnataka	Rs. 1,00,000
13.	Kerala	Rs. 300,000
14.	Madhya Pradesh	Rs. 1,00,000
15.	Maharashtra	Rs. 3,00,000
16.	Manipur	Rs. 3,00,000
17.	Meghalaya	Rs. 1,00,000
18.	Mizoram	Rs. 25,000
19.	Nagaland	Rs. 1,00,000
20.	Odisha	Rs.3,00,000
21.	Punjab	Rs. 3,00,000
22.	Rajasthan	Rs. 1,50,000
23.	Sikkim	Rs. 3,00,000
24.	Telangana	Rs.1,00,000
25.	Tamil Nadu	Rs. 3,00,000
26.	Tripura	Rs. 1,50,000
27.	Uttar Pradesh	Rs. 1,00,000
28.	Uttarakhand	Rs. 3,00,000
29.	West Bengal	Rs. 1,00,000
30.	Andaman & Nicobar Islands	Rs.3,00,000
31.	Chandigarh UT	Rs. 3,00,000
32.	Dadra & Nagar Haveli UT	Rs. 15,000
33.	Daman & Diu	Rs. 1,00,000
34.	Delhi	General –Rs. 1,00,000 Senior citizen- Rs. 2,00,000 Transgender – Rs. 2,00,000
35.	Lakshadweep	Rs. 9,000
36.	Puducherry	Rs. 1,00,000

The application form for legal aid can be availed free of cost.

The services can be availed without having to spend any money. For availing legal advice, a person may visit the respective legal services authority office. A Civil or Criminal Legal Aid recipient does not have to repay any amount to the Legal Aid Provider, the Legal Aid Agency or the prosecution at the end of the criminal process or at some other time

5.7.3. Process for obtaining Civil and Criminal Legal Aid

Any person who fulfils the eligibility criterion to obtain legal aid may be provided with such assistance through the Legal Services Authorities existing from the National to Taluka levels including the NALSA, State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, Supreme Court Legal Services Committee and High Court Legal Services Committees.

Once an application seeking legal aid is submitted to the concerned authority, it would be examined by that particular Legal Services Institution. On the basis of which, it would be decided which action to be taken, ranging from providing counselling/advice to the parties, providing a lawyer to represent them in the court, etc. The same shall also be communicated to the parties concerned.

A decision should be taken on an application within ten days of its receipt. Upon selection, the party concerned is informed about the details of the lawyer assigned to him.¹²⁰ Same copy of such letter is also sent to the lawyer intimating him about his assignment of the client. Either the lawyer or the party may contact the other person, meanwhile basic principle of natural justice applies in all matters i.e. audi alteram partem. It means that both the party should be given an opportunity to present their case and that no order can ensue without hearing both sides of the arguments. So, no investigation can proceed further till the time both the parties are not duly represented by competitive legal assistance.

Although legal aid is provided as a matter of right and not charity, it can still be denied at the beginning before the application for the same has not been accepted. It can also be denied or withdrawn at a later stage owing to the following conditions:

- (a) when a person is found to be in contravention of guidelines laid down under section 12 of the Act;
- (b) when a person applied owing to insufficient funds and it was

¹²⁰ Regulation 7(2) of the National Legal Services Authority (Free and Competent Legal Services) Regulations 2010.

later realized that he, in fact had sufficient funds;

(c) when a person avails the benefits of legal aid by means of misrepresentation or fraud;

(d) when a person doesn't cooperate either with the advocate assigned to him or with the Legal Services Authority/Committee;

(e) when a person engages a practitioner on his own accord and not the one assigned by the Legal Services Authority/Committee;

(f) when the person availing the benefits dies, except in a civil suit where his right or liability would survive;

(g) when it is found at any time that the application made for availing the benefits was in fact made with the purpose to abuse the process of law or of legal services.

Once denied, there is no process for revision/review of appeal of the decision. The court appoints Advocates with a good legal practice on its own volition or it may also choose from a list of Advocates who have enrolled themselves under NALSA or SLA.

5.8. HOLISTIC LEGAL SERVICES

In the Indian Legal Aid system, legal services have an expanded meaning and is not limited to providing only court based legal services. It has many facets which include creating legal and socio-legal awareness, connecting beneficiaries to welfare schemes of the government, conducting camps and campaigns to facilitate the general masses and the targeted groups in getting benefits, collaborating with NGOs for rescue and rehabilitation programmes, providing immediate relief to victims of various disasters in collaboration with the district authorities, etc.

The achievement of holistic legal services in India is made possible through the active role played by the Para Legal Volunteers. Apart from rendering their services in the aforementioned areas they act as a bridge between the legal services providers and the general masses. Moreover, the Indian legal system has a provision of enrolling volunteers from different sections of the society viz., prisoners, students, social workers, women, senior citizens, transgenders, experts in different fields, etc. who aid their community members to seek different types of Legal Aid other assistance.

5.9. LEGAL AID BEFORE REGIONAL HUMAN RIGHTS MECHANISMS

Legal aid is available before court and quasi-judicial bodies including tribunals. Additionally, the Supreme Court opined that “[i]n

order to enable the State to afford free legal aid and guarantee speedy trials, a vast number of persons trained in law are essential. Legal aid is required in many forms and at various stages for obtaining guidance, for resolving disputes in Courts, tribunals or other authorities... Legal education should be able to meet the ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situation...¹²¹

Echoing this sentiment of the court, the Bar Council of India (BCI) in 1997 made Legal Aid a compulsory practical paper to be taught in the Law Colleges all over India, this step has given a new lease of life to the poor.¹²²

To further the same objective, BCI in 2008 issued rules on “Standards of Legal Education and Recognition of Degrees in Law” which prescribe Legal Aid Clinic as a mandatory requirement for recognition of the Law Colleges.¹²³ Under this provision, every law college has to establish a legal aid clinic, which remains open and functional during regular college hours and anyone in need can approach the cell, if a need arises. Such clinics are also mandated to be given a designated area around the entrance of the institute. They are also mandated to conduct a minimum of 2 legal literacy camps around the needy and downtrodden vicinity of the college.

In addition to that academicians have also taken it upon themselves to ensure that legal aid reaches the neediest. Special assistance is provided to illiterate people who are either not aware of their rights or are ignorant of the proper legal mechanism to ensure restoration of their rights.

Also, the National Human Rights Commission¹²⁴ along with the High Courts and Supreme Court has the power to take *Suo moto* cognizance if they happen to know about any human right violation committed against a person who has no recourse to approach the court.

5.10. ALTERNATIVE SOURCES OF LEGAL ASSISTANCE

Apart from the direct sources of Legal Aid, India has adopted a unique system of providing legal assistance through alternative

¹²¹ State of Maharashtra v. Manubhai Pragaji Vash, AIR. 1996 SC 1.

¹²² Report by V.M Salgaocar Law college, Goa in with the UNDP and Government of India on Access to Justice Project on “Study of the Law School based Legal Service Clinics conducted in 2011 (page 11).

¹²³ Ibid at 8.

¹²⁴ Data available at: <https://nhrc.nic.in/press-release/suo-motu-cognizance> last accessed 22 January 2020

sources such as community law clinics, law clinics in colleges and universities, jail Legal Aid clinics, village Legal Aid clinics, pro bono, etc. Along with Panel Lawyers, the workforce of these clinics include the paralegal volunteers, students, teachers, undertrial prisoners (in jail Legal Aid clinics), Panchayat members, etc. who carry out various functions such as identifying the people in need of Legal Aid and assistance, facilitating them in getting the said assistance, regular follow ups, filing up forms and writing applications on their behalf, creating legal awareness by various means, rendering their services in different camps and campaigns, etc.

5.11. PECULIARITIES OF LEGAL AID IN INDIA

One of the unique features of the Indian Legal Aid system is that it caters to about 80% of its 1.3 billion population having social, economic and geographical diversities. Some unique features of Legal Aid in India are as follows:

- (i) All women, children or individuals in custody are eligible to get free Legal Aid.
- (ii) No means test is applied in availing Legal Aid.
- (iii) Around 80% of the total population becomes entitled to get free Legal Aid.
- (iv) Free Legal Aid is provided in both civil and criminal matters.
- (v) Legal aid is not confined merely to providing of lawyers.
- (vi) Legal aid includes reaching out to people and facilitating them in actualization of their rights.
- (vii) Legal services institutions are manned by judicial officers.

6. COSTS OF RESOLVING DISPUTES WITHIN THE FORMAL JUDICIAL MACHINERY

6.1. OVERVIEW OF JUDICIAL COSTS FOR LITIGANTS

The Black's Law Dictionary defines cost as a "pecuniary allowance made to the successful party for his expenses in prosecuting or defending a suit or a distinct proceeding with a suit"¹²⁵ generally the expenses are awarded at the pleasure of the court, especially in a civil matter "costs shall follow the event".¹²⁶

¹²⁵ *Apperson vs. Insurance Company* 38 N.J. Law.

¹²⁶ C.K. Thakker, Code of civil procedure (Lawyer's edition) Vol. 1 at 645-47.

6.1.1. Classes of costs

The Civil Procedure Code 1908 deals with the following kinds of costs:

(i) **General Costs** (section 35):

The purpose of this section is to secure the expenses borne by a litigant during the litigation.¹²⁷ It neither benefits the winning party nor punishes the losing side¹²⁸, the only rule which is followed is whosoever wins the other party must bear the cost of his expenses during litigation too.¹²⁹ The principal rules pertaining to the award of general cost are hereunder:

a) Costs to be awarded at the pleasure of the court:

This choice of the court must be judicially applied by the courts following the dictates of fair play and equity. There is no one particular rule or procedure which needs to be followed, each case is to be looked at considering its own particular facts and circumstances.

b) Award of cost to winning party:

The rule is to give the winning party the costs unless there is an explicit reason to deprive him of that opportunity.¹³⁰ This rule is not solely dependent on who wins or loses the case. If the successful party is guilty of misconduct, the party may be deprived the costs.¹³¹ Section 35 (2) expressly lays down that the court must always record reasons every time it waives off paying the cost of the trial.¹³² This section is based on the rule that “costs are only in indemnity, and never more than indemnity”.¹³³

(ii) **Miscellaneous Costs** (Order 20-A):

There are specific powers granted to the court pertaining to the award of costs in certain matters where expenses have been incurred by the party for things like giving notices, typing charges, inspecting of records, obtaining copies and producing witnesses. Section 35 was compensatory in nature. Order 20A applies when the court thinks enough compensation has not been paid under section 35. The court can also take deterrent action under this section if it is of the opinion that the court case was inspired by malicious motive and was com-

¹²⁷ *Nandlal Tanti vs. Jagdeo Singh* AIR 1962 Pat 36.

¹²⁸ *N.Peddanna Ogeti v. Katta vs. Srinivasayya Setti Sons* AIR 1954 SC 26.

¹²⁹ *Tungabhadra Industries Ltd. vs. Govt. of A.P.* AIR 1964 SC 1372.

¹³⁰ *Jugraj Singh vs. Jaswant Singh* (1970) 2 SCC 386.

¹³¹ *Col.A.S. Iyer vs. V. Balasubramanyam* (1980) 1 SCC 634.

¹³² *Jugraj Singh vs. Jaswant Singh* (1970) 2 SCC 386.

¹³³ *Gundry vs. Sainsbury* (1910) 1 KB 645.

pletely baseless.¹³⁴ Furthermore, this section is applicable only in suits and not in appeal or in revision. The existence of the following conditions is imperative before the application of this section¹³⁵:

- a) the prerogative/right or defense must be untrue or malicious;
- b) objection raised by the opposing party that the claim or defense taken by the party was untrue to the knowledge of the party undertaking it.
- c) such claim must have been rejected or withdrawn in whole or in part.

The court can award a maximum of Rs. 3000 as compensation. The person awarded compensation is not exempted from criminal liability. In a subsequent suit of similar nature seeking damages or compensation for false claim or defense, the court shall consider the amount of compensation already awarded to the plaintiff.¹³⁶ The order awarding the cost of compensation is appealable.¹³⁷ However, no appeal lies against such an order.¹³⁸ This is because such an order is often termed as “case decided”, though a revision lies.¹³⁹

(iii) Compensatory costs for false and vexatious claim or defenses (Section 35-A):

This is applicable during any proceeding, which also includes an execution proceeding but doesn't include an appeal or revision. If a party, puts forward a false or vexatious argument which is later rejected, abandoned or withdrawn in whole or in part court may award compensation for the same. Although, the court cannot make an order for compensation for more than 3000 rupees or anything exceeding the pecuniary jurisdiction of that court.

(iv) Costs for causing delay (Section 35-B):

This provision was incorporated by the Amendment Act of 1976 in order to put a tab on the delay tactics applied by the litigating parties. It gives the authority to the court to levy penalties on parties deliberately trying to cause delay of time during the litigation procedure. Such costs have no semblance to the final outcome of the trial. Although, imbursement of such cost has been put as a precedent

¹³⁴ *T. Arvindanam vs. T.N. Satyapal* (1977) 4 SCC 467.

¹³⁵ S. 35-A (1).

¹³⁶ S. 35-A (3)(4).

¹³⁷ S. 104(1) (ff)

¹³⁸ S. 104 (1) Proviso.

¹³⁹ *Purna Chandra vs. Secy. Of State* AIR 1937 Pat 477

condition before the suit can move further.¹⁴⁰ This is a mandatory section, therefore the court will not permit additional prosecution or defense of the matter in case of the party failing to pay the court costs. If the reasons for delay are beyond the control of the party like strike of advocates or staff, declaration of the last day for payment of costs as holiday, etc. the court has the authority to condone such a delay by extension of time.¹⁴¹ In the recent case of *Ashok Kumar v. Ram Kumar*¹⁴², the apex Court opined that the current system of imposing inadequate costs in civil matters is not creating the required deterrent effect and is thereby unsatisfactory. A more pragmatic approach must be applied.

6.2. EXEMPTION FROM JUDICIAL COSTS

The Constitution of India, through its ideals set forth in the Directive principles of State policy under Article 39A talks about providing free Legal Aid. Though they are not enforceable, yet on the basis of these ideals various laws have been made. These principles talk about exceptional circumstance wherein court fees can either be waived off or the same shall be borne by the state for people who cannot afford going to courts. The Law Commission has also made similar suggestion, by making certain exemptions pertaining to the cost of litigation. It suggested that the cost of litigations for the indigent litigants should be done by minimizing the cost of litigation and also improving the quality of Legal Aid. An indigent individual is somebody without sufficient means (other than property exempt from attachment) to pay the prescribed court fees.

Order XXXIII of Civil Procedure Code 1908 provides exceptional circumstances to an indigent person wherein he can file a suit without paying the actual court fees or any other fees in the process of litigation. Additionally, it is the responsibility of the court to provide an unrepresented litigant with an advocate in accordance to the rules laid down in that respective High Court. Similarly, for matters of appeal, Order XLIV of Civil Procedure Code 1908 enables an indigent person to do so without payment of court fee.

Furthermore, the Legal Services Authorities Act, 1987 has enlarged the scope of litigations for the needy and poor in India. It talks about the formation of National Legal Services Authority (NALSA) at the national level with the Chief Justice of India as its head and

¹⁴⁰ *Hakmi vs. Pitamber* AIR 1978 P&H 145.

¹⁴¹ *Anand Prakash vs. Bharat Bhushan* (2009) 2 SCC 656.

¹⁴² (2009) 2 SCC 656.

a senior Judge of the Supreme Court as its executive Chairman. Section 4 of the Act talks about the functioning of NALSA. On the same lines, every state has a State Legal Services Authority. Wherein a Legal Aid fund needs to be maintained by the High Court Legal Services Committee, District Legal Services Authority and Taluk Legal Services Committees. They will always have certain advocates on its roll, whose services can be availed by the indigent people upon fulfillment of the eligibility criterion. The eligibility conditions of who all are entitled to this fund are given under section 12 of the Act. It constitutes the following class of people:

- (a) a person belonging to the Scheduled Caste or Scheduled Tribe;
- (b) a victim of human trafficking;
- (c) a woman or a child;
- (d) an individual with a disability;
- (e) an individual facing a situation of undeserved want such as a victim of a mass disaster, violence, natural calamities etc.;
- (f) an industrial workman;
- (g) a person in care or protection, including custody in a protective home or a juvenile home or psychiatric hospital; and
- (h) in receipt of annual income less than rupees 50,000/-.

They can avail the benefits under the Legal Service Act only after a prima facie case is established to be prosecuted or defended.¹⁴³

In order to ensure speedier trial, some of these matters are referred to the Lok Adalats also in order to ensure speedy justice. NALSA has also framed a Scheme for Free and Competent Legal Services, 2010 in order to make the procedure of approaching the Supreme Court easy and hassle free. Lok Adalats are also held regularly by the Legal Service Authorities and Committees at various levels.

In addition to that, the Supreme Court can exercise its power under Order XLVII Rule 6 of the Supreme Court Rules, 1966 to dispense with the payment of court-fee in appropriate cases. The courts have also provided exceptions by way of its various rulings. In a recent case of the Orissa High Court, women there were exempted to pay court fees.¹⁴⁴In another case of the Delhi high court, the court directed entire court fees to be refunded when the matter was referred

¹⁴³ Section 13 of the National Legal Service Act, 1987.

¹⁴⁴ Sanjay Kumar Das vs. Munnum Patnaik, 2018 SCC OnLine Ori 445.

to mediation and the decree given was a Compromise Decree.¹⁴⁵the Bombay high court gave a similar ruling when a matter was referred to the Lok Adalat.¹⁴⁶

6.3. MECHANISMS TO REDUCE COSTS BY VARIATIONS TO COURTS AND PROCEDURES

The above cited instances of Article 39A and laws and judicial pronouncements have been instrumental in reducing the judicial costs. The legal services authority Act, 1987 was enacted with the sole objective of making litigation a less time consuming and cheaper alternative. The same has been achieved by introducing alternative sources like mediation, conciliation, arbitration, tribunals, Lok Adalats, evening courts, etc. They serve a two-way purpose of reducing the burden of court cases and additionally they are cheaper and follows fewer procedural technicalities to that of regular court cases.

7. PROTECTION OF DIFFUSE AND COLLECTIVE RIGHTS

The rights under this question have been categorically classified into two broad areas: Diffuse rights and Collective rights. Diffuse rights are indivisible in nature and enjoyed by a group as indeterminate set of rights. These are enjoyed by the group not only in collectivity but at an individual level. So, all the members of a particular group are able to enjoy all these rights individually so much so they are able to enjoy them as a group. They are very much similar to third generation of the human rights. Human rights, which are indispensable for any human beings have been classified into three broad categories:

- (i) First generation of human rights which have been identified as Civil and political rights
- (ii) Second generation of human rights which have been identified as Social, Economic and Cultural rights
- (iii) Third generation of human rights, which have been identified as Collective rights or group rights.

So, there appears to be a misnomer as the third generation human rights are synonymous to the second category mentioned under the

¹⁴⁵ Nutan Batra vs. Buniyaad Associates 2018 SCC OnLine Del 12916.

¹⁴⁶ In re Refund of Court Fees 2013 SCC OnLine Bom 1383.

issue in question. But, these collective rights are different from the collective rights which are specified under the issue in question. As these third generation human rights can be enjoyed by a group but are also enjoyed by all the members of that group individual. These rights entail right to have clean and healthy environment, right to self-determination etc. In India, these rights are generally promoted by domestic statutes which have specifically adopted the international guidelines and protocols. This theory of Specific Adoption states that nations can explicitly adopt the international protocols and guidelines with the help of specific domestic legislations. Article 253 of the Indian Constitution, 1950 brings home the above-stated proposition.

So, the diffuse rights which mainly talk about environmental rights, right to education have their constitution as well as the legislations brought in by the Parliament from time to time. The right to clean environment has been ensured by the following statutes:

- (i) The Water Act, 1974
- (ii) The Air Act, 1982
- (iii) The Environment Protection Act, 1986
- (iv) The Wildlife Protection Act, 1972

Not only these central laws prevailing over the entire territory of India are ensuring right to protection of environment but there are innumerable state laws as well to ensure the similar objectives. The redressal agencies under these various environmental statutes do help in addressing the problems which arise over a period of time. Another example of the diffuse rights can be intersectional rights. These rights should compound together so that all the marginalized people come together in support of each other. Say, women, LGBTQIA+ members, people considered low in the caste hierarchy should come together in support of each other. These people have their individual rights embedded in the law of the land but they enjoy collective rights as well under the realms of inter-sectionality.

However, collective rights are enjoyed by the group and not individually. So, enforcement rights against the state entity come under its domain. So, Public Interest Litigation under the Article 32 and 226 of the Indian Constitution, 1950 are the clear exemplification of the collective rights. The redressal agencies under these rights can be the justice delivery system in India entailing Supreme Court, High Court.

8. PROFESSIONAL LEGAL ETHICS

Professional ethics are the standard code of conduct which professionals are expected to follow. It is necessary to set forth expectations of a standard behaviour in order to avoid practices involving moral turpitude. For the same reason the legal profession also works on the broad guidelines in order to regulate the behaviour of a lawyer, towards himself, his clients, his opponent, his colleagues, the court etc. Since lawyers, other than being professionals are also officers of the court and hence, they are an instrumentality in the administration of justice.

The rules of conduct are mentioned under the Advocate's Act, 1961 which has empowered the Bar Council of India, a statutory body to represent and regulate the conduct of advocates in India¹⁴⁷. The State Bar councils are entrusted to form and regulate a disciplinary committee¹⁴⁸. When a practicing attorney is found guilty of professional wrongdoing, then after due enquiry, he may be reprimanded by way of a suspension for a particular time duration or in exceptional cases may also lead to elimination of his name from the state bar council.

Although, the term 'misconduct' has not been specifically defined under the Advocate's Act, various courts have tried to interpret it by way of various decisions. In the case of *Nortanmal Chauaisia v. M.R. Murlu*¹⁴⁹ the apex court defined misconduct as breach of discipline. Any kind of misconduct or wrongful act, whether done intentionally or unintentionally or express abuse of a rule of the standard of practice.

The test for misconduct was laid down in *re Tulsidas Amanmal Karim*¹⁵⁰, any one condition is sufficient to prove misconduct:

- (i) Conduct makes him unsuitable to continue as member of this profession.
- (ii) Conduct makes him incompetent to be trusted with responsibilities which an Advocate is expected to perform.

In the case of *Suo Moto Enquiry Vs. Nand lal Balwani*¹⁵¹ the defendant advocate was found guilty of bad behaviour and his removal

¹⁴⁷ Section 49(1)(c) of the Advocates Act, 1961.

¹⁴⁸ Section 35 of the Advocates Act, 1961.

¹⁴⁹ 2004 AIR SCW 2894.

¹⁵⁰ (1941) 43 BOMLR 250.

¹⁵¹ (1999) 2 SCC 743.

was ordered from the Bar council of Maharashtra and Goa for throwing shoes and shouting slogans in the Supreme Court of India.

Supreme Court Bar Association vs. Union of India determined the following key responsibilities of Bar Council of India:

- To receive complaints against professional conduct of Advocates and refer them to the disciplinary committee.
- If the Bar Council, despite getting reference from court, is unable to take action against the advocate, the court may pass suitable orders.¹⁵²

In *Shambhu Ram Yadav v. Hanuman Das Khatri*¹⁵³, the Supreme Court made it clear that writing a letter to your client to send money to bribe the Judge is a serious misconduct. It also held that legal profession is not a trade or business. Furthermore, looking for multiple adjournments so as to stall examination of witnesses, who is present in the Court also amounts to misconduct and an advocate may be punished for the same.¹⁵⁴

Bar Council of India is the chief self-regulating statutory body which determines the conduct and grant of license of law colleges in India. It is also the governing body to put forth the minimum qualifications required of a student to become a practicing lawyer. For example, fixing of minimum attendance criterion, the number of subjects to be taught for a law degree, the basic requirement of passing of All India Bar Exam (AIBE), mandatory requirement of interning under a practicing advocate to gain professional experience. Amongst other things, it has made it mandatory to teach Professional Legal ethics and court craft in the law colleges across India. The syllabus includes duties of an Advocate towards the profession, his colleagues, his client, the court and his general conduct as a member of the bar, noncompliance of which shall lead to disbarment. The Bar council also mandates passing of AIBE, which is an assessment test conducted by BCI, assessing the eligibility of an Advocates to practice law in the courts. Only upon passing it can one practice law in India with a 'Certificate of practice' issued by the BCI.

The study, examination and passing of 'Professional ethics & cases of professional misconduct under BCI rules' as a subject is mandatory for a bachelor's degree in law in India. Additionally, the same subject is also mandated by a candidate to pass before being eligible

¹⁵² Section 38 of the Advocate's Act, 1961.

¹⁵³ AIR 2001 SC 2509.

¹⁵⁴ *N.G Dastane v. Shrikant S. Shivde*, AIR 2001 SC 2028.

to practice law in India.¹⁵⁵ Although, the same is not mandatory to be taught at the post-graduation level for an advanced degree in law. In India there has been no provision for the conduct of oath ceremony prior to the entry of a lawyer into a legal profession, however they are bound by the code of conduct laid down by the Advocate Act, 1961 and the power to make rules from time to time by the Bar Council of India.

The apex court in *Krishnakant Tamrakar v State of Madhya Pradesh*¹⁵⁶ stated that when people are denied access to justice it is irreversible damage. Therefore lawyers should not go on strike or call for a boycott. They are allowed to express their protest by way of giving press interviews, carrying banners or wearing bands (Black/white), or any other form of peaceful protest which does not disrupt the order of business in the court.¹⁵⁷ If, any association or group of lawyers in contravention of the above rule goes on a strike, then the State Bar Council is empowered to take appropriate action against them.¹⁵⁸

Despite the laws and fear of such hefty penalty by the BCI, lawyers are often blatantly going on strike for their own collective benefit. So much so, that the general order of business is often impacted by the same.¹⁵⁹ The protest of lawyers for demanding the enforcement of Lawyer's Enforcement Act¹⁶⁰. Lawyers in India have gone on strike to from reasons ranging from refusal to register a FIR of a fellow lawyers by the police, refusal to transfer of judges in a certain High Court, there not being proper infrastructure facilities in the High court or it being made a working day on an exceptionally hot day.¹⁶¹ They do not collectively lobby for the passing of a substantive law or rule which benefits the poor or to resist any change which can impact the world at large.

The Indian Constitution imposes a duty upon the states to afford

¹⁵⁵ All India Bar Examination, Available at: <http://www.allindiabarexamination.com/> last accessed 17 January 2020

¹⁵⁶ AIR 2018 SC 3635.

¹⁵⁷ Ex-Capt. Harish Uppal v Union of India and Another, (2003) 2 SCC 45

¹⁵⁸ Common Cause a Registered Society v. Union of India and Others AIR 2005 SC 4442

¹⁵⁹ The Delhi High Court Amendment Act, 2015

¹⁶⁰ Asian News International, FirstPost, March, 28, 2020, Available at: <https://www.firstpost.com/india/tis-hazari-court-clash-two-days-after-incident-delhi-lawyers-protest-outside-sc-demand-law-to-protect-advocates-7597401.html> last accessed 18 January 2020

¹⁶¹ Prachi Shrivastava, "Can the SC do anything about frequent strikes by lawyers?" Live-mint, 6th Oct, 2015 Available at: <https://www.livemint.com/Politics/DIQyJ9qcsdrC9k99DDO-0VJ/Can-the-SC-do-anything-about-frequent-strikes-by-lawyers.html> last accessed 18 January 2020

legal services to those who cannot pay for it themselves.¹⁶² Additionally Article 14 and 22 (2) of the Constitution further ensures equality before the law, making it mandatory for the state to not distinguish on the basis of economic inequality while providing legal services to the needy. In order to fulfil the above obligation, the Government of India, Department of Justice has created a database of a lawyers willing to provide their services to litigants identified under the Legal Services Act.¹⁶³ In order to further the educational initiatives directed towards strengthening professional identity and legal ethics in India, the concept of Legal Aid came in 1973 from the Expert Committee on Legal Aid¹⁶⁴.

There already exists a regional code of conduct governing lawyers conduct in India, although not in the form of an oath, yet all the duties of an Advocate have been specified in the Advocate's Act of 1961, which has been further amended by addition of Rules by the Bar council of India from time to time. Lacunas, if any, have been interpreted by the Courts. All the principles are based on equity and reasonableness. The researcher sees no reason for non-acceptance of any global or universal code of conduct of lawyers. Many of them already exists pertaining to commercial litigations.

9. TECHNOLOGICAL INNOVATION AND ACCESS TO JUSTICE

Digital technology has eased provision for legal services. Delhi Police provides certain services to citizens online such as lodging an e-FIR¹⁶⁵, reporting complaints online, lodging missing person report, domestic help registration, tenant registration¹⁶⁶ etc. Other Government services such as applying for birth, death and marriage registration certificates, applications for PAN Card, Aadhar Card, Passport¹⁶⁷, issuing Record of Rights, issuance of caste certificate and domicile certificate¹⁶⁸ etc. are all available online. Additionally,

¹⁶² Article 39 A of the Constitution of India 1950

¹⁶³ Section 12, Legal Services Authority Act of 1987.

¹⁶⁴ Expert Committee on Legal Aid of the Ministry of Law and Justice, chaired by Justice V. R. Krishna Iyer.

¹⁶⁵ Delhi Police, "Citizen Services", Available at: http://www.delhipolice.nic.in/citizen_services.html last accessed 22 Jan 2020

¹⁶⁶ *ibid*

¹⁶⁷ National Government Services Portal, Available at: <https://services.india.gov.in/?ln=en> last accessed 22 Jan 2020

¹⁶⁸ District Delhi, "Services at doorstep" Available at: <https://edistrict.delhigovt.nic.in/in/en/Public/Services.html>; last accessed 22 Jan 2020

citizens can also file RTI Applications and First Appeals online.¹⁶⁹ Applaudable steps have been taken in order to further the digitalization in the Legal Aid which consequently has undoubtedly eased the various tedious legal tasks and the matters connected therewith. For example, the ‘Tele Law Portal’, which seeks to facilitate the delivery of legal advice, by connecting lawyers having subject matter expertise with clients from marginalized social sector through video conferencing at various special centers set up by the Legal Services Authorities. Further, the Supreme Court led the digitalization of one crore five lakh pages and records of civil appeals from pre-independence era till the year 2002 is a commendable step with regard to the matter at hand. The Integrated Case Management System (ICMS), the National Judicial Data Grid, the E-Courts project etc. are other examples highlighting the advent and consequential benefits of digitalization to this legal field and specially the arena of Legal Aid. It is noteworthy that the Nyaya Mitra program which was launched in 2017 to collaborate with the e-courts could render admirable assistance in resolution of cases that have been pendent for more than ten years thereby reducing pendency of litigation in courts. Technology has made available the vast multitude of Central and State Legislations, Notifications, Bills, Standing Committee and Law Commission Reports etc. at the click of a button. Several Governmental and Non-Governmental agencies have been instrumental in free access to legal and law related information in India. The National Informatics Centre (hereinafter referred to as the ‘NIC’) (<http://www.nic.in/>) has launched web portals such as www.judis.nic.in, <https://indiacode.nic.in/>, <http://lawcommissionofindia.nic.in/>, ministerial websites and websites of various High Courts thereby, providing access to cause lists and case status reports, daily orders and judgments of the Supreme Court of India, all State High Courts, District and subordinate Courts and Tribunals as well as provides access to Acts, Central and State legislations, Rules, Regulations, Government Orders and Commission and Committee Reports.¹⁷⁰ Additionally, several private initiatives have also been undertaken such as <http://www.legalserviceindia.com/> and www.indiankanoon.org which provides access to legal articles, Legislations, Bills enacted

¹⁶⁹ RTI online, “An initiative of Department of Personnel & Training, Government of India” Available at: <https://rtionline.gov.in/> last accessed 22 Jan 2020

¹⁷⁰ Prof. Ranbir Singh, Prof. Srikrishna deva Rao, “Access to legal information & research in digital age” National Law University Press, Sector-14, Dwarka, New Delhi-110078, Available at: <http://nludelhi.ac.in/download/publication/2015/Access%20to%20LEgal%20Information%20and%20Research%20in%20Digital%20Age.pdf> last accessed on 13 Feb 2020

by the Parliament, Parliamentary Committee discussion papers etc. The creation of the Legal Information Institute of India (hereinafter referred to as the 'LII of India') (<http://www.liiofindia.org/>) was a step in the direction of the free access to law movement in India. It was established in 2011 by AusAID and the Australian Research Council.¹⁷¹ The LII of India Project was supported by 8 National Law Schools and partnering institutions. The portal provides free access to a legal database containing case laws, legislations, scholarly legal articles, reports and treaties etc.

The e-Courts Project is an integrated mission mode project which is a part of the National e-Governance Plan for the Indian Judiciary.¹⁷² The e-Governance Plan aims at information and communication technology enablement and computerization of the Indian Judiciary in an attempt to make the justice delivery system efficient, timely, affordable and accessible. Through the collaborative effort of the Department of Justice, the National Informatics Centre and other Central Government institutions, software and applications enabling and providing effective court management and case management systems, case information system, e-Filing and e-Payment gateways, Video Conferencing facilities, Virtual Traffic Courts and payment of e-Challan penalties¹⁷³, National Judicial Data Grid, mobile based service delivery through SMS and mobile applications, have been implemented.¹⁷⁴ The introduction of digital filing (e-filing) in the Supreme Court of India through the Integrated Case Management and Information System has been especially, hailed as a significant step towards paperless filings and introduction of technology in the legal system.¹⁷⁵ Another important step under the e-Courts Project has been the launch of the first Virtual Court (<http://vcourts.gov.in/virtualcourt/>) for online payment of e-traffic challans digitally gen-

¹⁷¹ Indian Law Institute, Delhi, Available at: <http://www.liiofindia.org/liiofindia/brochure.pdf>

¹⁷² Justice Sunil Ambwani "Information and Communication Technology in Courts" National Judicial Academy Bhopal. Available at: http://www.nja.nic.in/Concluded_Programmes/2018-19/P-1142_PPTs/1.Information%20and%20Communication%20Technology%20in%20Courts.pdf

¹⁷³ High Court of Delhi, New Delhi "Notice" Available at: http://delhihighcourt.nic.in/write-readdata/Upload/PublicNotices/PublicNotice_GCCMN0V665H.PDF

¹⁷⁴ eCommittee, Supreme Court of India, "Objectives Accomplishment Report As per Policy Action Plan Document" eCourt Project Phase II, Available at: https://ecourts.gov.in/ecourts_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf last accessed 20 Jan 2020

¹⁷⁵ Press Information Bureau, Government of India, Prime Minister's Office. Available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=161685> last accessed on 17 Feb 2020

erated by the Delhi Traffic Police.¹⁷⁶

The Supreme Court of India has recently in November 2019, launched its officmultilingual Mobile Application providing real time access to case status, display board, daily orders, judgments, office reports and circulars.¹⁷⁷ Another noteworthy achievement is the availability of judgments pronounced by the Supreme Court of India translated in regional languages on the official Court website as well as the mobile Application. The judgment in a case originating from a particular state is available in the language of that state.¹⁷⁸ The Supreme Court Registry has launched a software namely, the Supreme Court Vidhik Anuvaad Software (SUVAS) which is trained by Artificial Intelligence and is capable of translating English judicial documents such as orders and judgments into nine vernacular languages.¹⁷⁹ Additionally, certain State High Courts have also incorporated technology to ease and expedite court processes. The Telingana High Court has launched the Inter-operable Criminal Justice System (ICJS) as well as the National Service and Tracking of Electronic Processes (NSTEP).¹⁸⁰ The ICJS Project will help integrate Crime and Criminal Tracking Network and Systems (CCTNS) with the e-Courts and e-Prisons databases as well as with Forensic, Prosecution and Juvenile Homes such that multiple data entry is reduced and seamless exchange of real time information is enabled. Further, through the NSTEP, electronic service of notices and summons is made available. The Madhya Pradesh High Court has also launched a service for obtaining e-certified copies namely the 'Online Certified Copying Software' through which online certified copies of orders or judgments are provided to litigants and lawyers and they are updated regarding the delivery of the same through SMS facility.¹⁸¹

¹⁷⁶ Prathma Sharma, "Virtual court for online payment of traffic challan launched in Delhi" Livemint, Available at: <https://www.livemint.com/news/india/virtual-court-for-online-payment-of-traffic-challan-launched-in-delhi-1564210426060.html> last accessed 17 Feb 2020

¹⁷⁷ "Supreme Court Launches Multilingual Mobile Application" LiveLaw, Available at: <https://www.livelaw.in/news-updates/supreme-court-launches-multilingual-mobile-application-150192>

¹⁷⁸ "Supreme Court Starts Uploading Of Judgments In Regional Languages" LiveLaw, Available at: <https://www.livelaw.in/top-stories/sc-begins-uploading-of-judgments-in-regional-languages-146476>

¹⁷⁹ supra n.31

¹⁸⁰ supra n. 148

¹⁸¹ "Madhya Pradesh HC Becomes First Court In Country To Provide Online Certified Copies To Litigants" LiveLaw, Available at: <https://www.livelaw.in/news-updates/madhya-pradesh-hc-becomes-first-court-in-country-to-provide-online-certified-copies-to-litigants-150520> last accessed 12 Feb 2020

The Department of Justice, Ministry of Law and Justice has also launched two services namely the Tele Law Mobile Application as well as the Nyaya Bandhu (Pro Bono Legal Services) Mobile Application.¹⁸² Through Tele Law services (<http://www.tele-law.in/>), lawyers are connected to litigants, particularly the marginalized groups located in far flung and remote areas of the country, through video conferencing and telephone facilities available at Common Service Centers (CSCs) located at the Gram Panchayat level.¹⁸³ The Nyaya Bandhu (Pro Bono Legal Services) mobile application has been developed to encourage and promote the culture of providing pro bono legal assistance with the help of practicing advocates registered with the platform.¹⁸⁴

Another effort towards a speedy and cost effective dispute redressal mechanism was the introduction of the Online Consumer Mediation Centre (OCMC), NLSIU which was a pilot project by NLSIU set up by the Ministry of Consumer Affairs and recognized by the Ministry of Law and Justice, Government of India.¹⁸⁵ This ONMC Project aimed at grievance redressal and resolution of consumer disputes through the online mediation platform with the assistance of qualified web mediators following a strict code of neutrality and integrity.¹⁸⁶

The Open Society Foundations, the UK Department for International Development and the Australia Aid have collaborated towards global legal empowerment by establishment of the Global Legal Empowerment Initiative (hereinafter referred to as the 'GLEI').¹⁸⁷ The GLEI is a joint effort between Namati, an international organization working for the cause of legal empowerment at the community level and the Open Society Justice Initiative. Both the organizations, Namati and the Open Society Justice Initiative have, over the years, established a Global Legal Empowerment Network which consists of lawyers, paralegals, human rights activists, grassroots

¹⁸² "Department of Justice Launches Tele-Law: Mobile Application & Dashboard and Nyaya Bandhu(Pro Bono Legal Services)Mobile Application"Ministry Of Law and Justice, Available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1565228> last accessed 12 Feb 2020

¹⁸³ Overview of Tele-Laws,Department of Justice,Available at: <http://tele-law.in/static/overview-tele-law.php> last accessed 16 Feb 2020

¹⁸⁴ supra n. 36

¹⁸⁵ Online Consumer Mediation Centre,National Law School of India University, Available at: <https://onlinemediationcenter.ac.in/about-online-consumer-mediation-centre/> last accessed 16 Feb 2020

¹⁸⁶ *ibid*

¹⁸⁷ Open Society, Justice Initiative, "THE GLOBAL LEGAL EMPOWERMENT INITIATIVE" Available at: <https://www.justiceinitiative.org/uploads/c0ea0ba9-34c9-45e8-bab0-c16e9540508a/glei-description-092712.pdf> last accessed 17 Feb 2020

workers, educators, researchers etc. who collaborate over different geographic regions and disciplines and work towards global justice by equipping people with knowledge regarding usage of the law that affects them.¹⁸⁸ Namati deals with several initiatives across numerous countries. In India, the organization is working at helping fishing communities have a greater role in conditions that affect their lives especially with infrastructural and developmental projects coming up around coastal sites. Namati is working towards environmental regulation to achieve better environmental compliance.¹⁸⁹

Another initiative commissioned by the Open Society Justice Initiative has been the Research Report titled ‘Technology for Legal Development: A Global Review’ conducted by ‘The Engine Room’ from August to December, 2018.¹⁹⁰ The Report focusses on how technology is being used across jurisdiction towards promoting the cause of legal empowerment and thereby, providing people with information about the law, legal advice, assistance and legal services. The study supports a technology enabled legal empowerment project which has the potential of expanding the geographic reach of legal service providers, enabling people to help themselves and providing a level playing field to legal professionals and the general public and thereby, minimizing the inequities in access to justice.¹⁹¹ An example of some of the technology supported legal empowerment initiatives from India mentioned in the Report are, amongst others, Presolv360¹⁹² (<https://www.presolv360.com/>) which is a legal-tech platform to resolve commercial disputes online through its Arbitration360 and Mediation360 module engaging qualified professionals; Nyaaya¹⁹³ (<https://nyaaya.org/>) which is a platform providing comprehensive legal information of various legal issues which the general public deals with in everyday life; the Online Consumer Mediation Centre (<https://onlinemediationcenter.ac.in/>) which is a pilot project of the NLSIU, Bangalore and provides innovative technological methods to resolve consumer disputes online¹⁹⁴; Tele law, which is an initiative

¹⁸⁸ NAMATI, Available at: <https://namati.org/network/> last accessed 12 Jan 2020

¹⁸⁹ NAMATI “Seeking Environmental Justice in India,” Available at: <https://namati.org/our-work/environment/> last accessed 14 Jan 2020

¹⁹⁰ Technology for legal Empowerment : A Global Review. Available at: <https://www.theengineroom.org/wp-content/uploads/2019/01/Tech-for-Legal-Empowerment-The-Engine-Room.pdf> last accessed 16 Jan 2020

¹⁹¹ *ibid*

¹⁹² Available at: https://www.presolv360.com/about_us last accessed 16 Jan 2020

¹⁹³ Nyaaya, Vidhi Centre for Legal Policy, Available at: <https://nyaaya.org/about-us/> last accessed 16 Jan 2020

¹⁹⁴ Online Consumer Mediation Centre, Available at: <https://onlinemediationcenter.ac.in/>

of the Department of Justice, and provides free Legal Aid and advice through video conferencing facility assisted by centers run by para legal volunteers.¹⁹⁵

10. UNMET LEGAL NEEDS

Assisting access denotes with facilitating people to access appropriate Legal Aid in order to gain access to justice. Access is a complicated concept and at least four aspects involve close assessment. If Legal Aid services are available and there is a satisfactory supply of Legal Aid clinics, then there exists the opportunity to obtain Legal Aid, and such a population may 'have access' to justice. The degree to which a population 'gains access' also depends on financial, structural and social or cultural barriers that sets limit to the utilisation of services, in this case Legal Aid. Thus, the concept of access to justice is measured in relation to utilisation of the available service of Legal Aid and is dependent on the physical accessibility and acceptability of Legal Aid services and not merely sufficiency of supply. Legal aid services available must be applicable and operative if the population is to 'gain access to satisfactory justice'. The availability of Legal Aid services, and obstructions to access, have to be measured in the context of the differing populations, their Legal Aid needs and socio- cultural settings of diverse groups in a society. Equity question of access may be measured in terms of the availability, utilisation or outcome assessment of Legal Aid services. Both horizontal (among diverse areas) and vertical dimensions (among different social groups) of equity in accessing Legal Aid require consideration. In making Access to Justice possible to the ones who cannot afford it, Legal Aid becomes critical, which in a welfare state like India becomes an integral part of various affirmative actions taken for the wellbeing of their citizens. Various grave issues of non-accessibility, partial availability and ineffective remedies are found in the country. The diversity of the country makes it susceptible to unmet demands but the efforts are on. Currently suggestions for creating additional benches of High Courts are under contemplation.

One such proposal is that of establishing the Thiruvananthapuram Bench of the Kerala High Court, the primary seat of which is situated in Ernakulam. This effort has been led by Shashi Tharoor, Member of Parliament from Thiruvananthapuram. Though it was widely supported but there is also confrontation from some people;

and the Kerala High Court in October 2019 has established a five-member judicial panel to review the viability of establishing a Bench in Thiruvananthapuram¹⁹⁶.

10.1. CITIZENSHIP BILL

Citizenship Bill including amendments made in 2019 as a result of this lot of protests have come up in the north-eastern part of the country.¹⁹⁷

10.2. LINGUISTIC, ETHNIC AND SEXUAL MINORITIES

Mob lynching these days is a clear exemplification of the same. Access is a shorthand term related to a wide-ranging established set of concerns that hinges on the degree to which individuals and population groups are able to acquire required legal services from the Legal Aid Cells. Physical accessibility is the key in both making a demand as well as a supply of a service possible.

11. PUBLIC LEGAL EDUCATION

The National Legal Services Authority (hereinafter referred to as 'NALSA') was established under the Legal Services Authority Act, 1987 aims at empowering the downgraded and left out groups of the society by offering legal literacy and awareness thereby, connecting the gap between legally accessible benefits and the eligible beneficiaries.¹⁹⁸ The NALSA as well as the State Legal Service Authorities are actively engaged in conducting legal literacy camps and legal awareness programmes and campaigns so that people can be made aware of their rights and duties under law.

The National Plan of Action was formulated by NALSA in 2005 to spread the mission of legal literacy throughout the country and keeping in view this objective the National Legal Literacy Mission was launched from 2005 to 2009. The Mission, with its motto being 'from ignorance to legal empowerment', aimed at empowerment of all segments of society, particularly scheduled castes, scheduled

¹⁹⁶ C.Raj Kumar, "Expanding cases to Justice, The Hindu, 28th Nov, 2013, Available at: <https://www.thehindu.com/opinion/lead/Expanding-access-to-justice/article11758732.ece> last accessed 12 Oct 2019

¹⁹⁷ Citizen Amendment Bill, 2016, Available at: [http://www.prsindia.org/uploads/media/Citizenship/Citizenship%20\(A\)%20bill,%202016.pdf](http://www.prsindia.org/uploads/media/Citizenship/Citizenship%20(A)%20bill,%202016.pdf) last accessed 12 Oct 2019

¹⁹⁸ National Legal Services Authority, Available at <https://nalsa.gov.in/home> last accessed 12 Jan 2020

tribes and other backward classes, minorities and women through legal literacy such that laws and judgments are comprehensible to one and all.

NALSA is in progress of running legal literacy programmes in schools and colleges in a effective way with the support of the Department of Education in all states. Under the guidance of the State Legal Service Authorities, legal literacy clubs have been set up at High Schools. Further, the institutions also conduct seminars and lectures, distribute pamphlets, participate in Doordarshan programmes, broadcast jingles, conduct live phone-in programmes, prepare short documentaries, float mobile multi-utility vans to spread awareness through public interactions, conduct street plays, host competitions like painting, debates etc.¹⁹⁹ on legal issues etc. Internship programmes have also been organized for law students to encourage about the importance of legal education and legal services activities. The Haryana State Legal Services Authority for example, has implemented special Legal Literacy Missions viz. Prisoners Legal Literacy Mission for prisoners and Legal Literacy Mission for empowerment of underprivileged for the disabled, neglected children, old age people etc. To promote the legal awareness campaign within Delhi, the Delhi State Legal Services Authority (hereinafter referred to as 'DSLISA') has also actively engaged in organizing legal literacy and awareness camps and seminars, workshops on socially relevant legal issues as well as publication of legal literature in regional languages.²⁰⁰

The statistical data on Legal Awareness Programmes conducted by the DSLISA reflect that in the years 2016, 2017 and 2018, 5850, 6600 and 5850 awareness programmes had been organized respectively.²⁰¹ From the period January to October, 2019, 5578 programmes have been organized in schools, colleges, villages, old age homes, prisons, observation homes, slum and labour colonies etc. The Rajasthan State Legal Services Authority (hereinafter referred to as 'RSLISA') has organized 11427, 15276 and 20586 legal literacy camps in the state during the years 2016, 2017 and 2018 respectively and 5901 camps have been conducted between January to August, 2019.²⁰² The

¹⁹⁹ Legal Literacy Programmes, Haryana State Legal Services Authority, Available at: <http://hslsa.gov.in/misc/legal-literacy-programmes> last accessed 12 Jan 2020

²⁰⁰ Legal Literacy, Delhi State Legal Service Authority, Available at <http://dlsa.org/legal-literacy-wing/> last accessed 24 Jan 2020

²⁰¹ Statistics, Delhi State Legal Service Authority, Available at <http://dlsa.org/statistics/> last accessed 24 Jan 2020

²⁰² Rajasthan State Legal Service Authority, Available at: <http://www.rlsa.gov.in/legal-awariness.html> last accessed 24 Jan 2020

Uttarakhand State Legal services Authority (hereinafter referred to as 'SLSA') has, in 2018, organized legal literacy awareness campaigns through mobile vans in Dehradun district whereby 19 villages including Gram Panchayats, schools and colleges have been covered and nearly 21,040 people have been benefited.

Further, statistics reflect that from the period January 2002 to December 2018, a total of 37,900 legal literacy and sensitization programmes have been organized in the state of Uttarakhand by the SLSA.²⁰³ Majority of the State Legal Service Authorities recognize appropriate NGOs by means of whom legal literacy campaigns can be taken to tribal, backward and far-flung areas of the country. Their endeavor is to promote and advertise these schemes so that the target group, for whom the Legal Services Authorities Act has provided free Legal Aid, may become cognizant of their rights and may approach the respective legal service agency if such need arises.

The NALSA Annual Report for the year 2018 reflects that 1,76,706 legal awareness programmes have been organized during the year with participation of 2,10,99,675 people.²⁰⁴ NALSA also devised a new campaign to empower the weaker and marginalized sections of society by visiting them door-to-door by identifying remote villages which are economically, educationally and socially backward and educating them about their rights, means of redressal of their grievances as well as the availability of free Legal Aid services and Legal Aid clinics. The Annual Report reflects that in 2018 itself a total of 66,010 villages were covered wherein about 39,68,380 people were educated. Furthermore, 4328 legal literacy clubs have been opened in schools across the country in the year 2018 itself.

Numerous NGOs and trusts are also actively involved in training and awareness at the community level. Majlis, one such organization, is a society and public trust with its mission to offer equality in the access to justice for all women by creating a culture of rights. Majlis, partners with NGOs and CBOs (Community-based organizations) working at the grass root level, to help women and girls demystify laws and develop an understanding of their rights, entitlements and the legal recourses available to them. They regularly conduct legal training and awareness camps as well as advisory sessions.²⁰⁵ Another

²⁰³ Uttarakhand State Legal Services Authority, *Available at:* <http://slsa.uk.gov.in/pages/display/114-statistical-information> last accessed 24 Jan 2020

²⁰⁴ National Legal Services Authority, Library, *Available at:* <https://nalsa.gov.in/library/annual-reports> last accessed 24 Jan 2020

²⁰⁵ Majlis manch, Narrative Report 2017-18, *Available at:* http://majlislaw.com/file/Majlis_Annual_Report_2017_18.pdf last accessed 10 Dec 2019

Society and Trust is the Socio Legal Information Centre (hereinafter referred to as the 'SLIC') which has established the Human Rights Law Network (hereinafter referred to as the 'HRLN') which partners with various NGOs, activists, researchers etc. to advance the cause of human rights through Legal Aid and legal literacy training programmes.²⁰⁶

The Centre for Constitutional Rights (hereinafter referred to as the 'CCRI') in India, under the aegis of the HRLN, has its primary focus on providing education on human rights law and activism. The CCRI provides courses in remote rural areas where there is no access to quality legal training and human rights education.²⁰⁷ AALI, another feminist legal advocacy and research group, is a support organization which focuses on women's rights issues. AALI engages in legal training of paralegals and NGOs which help develop capacity of the grassroot organizations to protect the human rights of marginalized women and children.²⁰⁸ Another organization, the Multiple Action Research Group (hereinafter referred to as 'MARG'), has its thrust on providing legal services to the disadvantaged group, unorganized labour and people displaced by development projects.²⁰⁹ MARG conducts legal awareness and legal literacy training programmes and workshops for training Government functionaries, NGOs, community workers and students on legal provisions, practice and procedure. The organization has developed training modules using legal literacy tools like resource compendiums, audio-visual methods and films to ease understanding and enable simplification of laws.

The National Literacy Mission Authority (hereinafter referred to as the 'NLMA'), an self-governing wing of the Ministry of Human Resource Development, is the nodal agency for planning, management and funding of adult education programmes in the country. Towards access to justice projects, the Ministry of Law and Justice has undertaken certain initiatives viz. incorporating Legal Literacy into the scope of activities of the NLMA. In this regard, activities have started in 62 districts of Uttar Pradesh and 31 districts of Rajasthan. An MoU has been signed between the Department of Justice and the NLMA for strengthening legal literacy activities by the State

²⁰⁶ Social Legal Information Centre (Registered Society and Trust), Available at: <https://hrln.org/who-we-are/> last accessed 10 Dec 2019

²⁰⁷ Social Legal Information Centre (Registered Society and Trust), Training and Seminars, Available at: <https://hrln.org/trainings-and-seminars-under-ccri/> last accessed 10 Dec 2019

²⁰⁸ AALI, Available at: <http://aalilegal.org/about/history/> last accessed 10 Dec 2019

²⁰⁹ Legal Awareness, Multiple Action Research Group, Available at: <https://www.ngo-marg.org/what-we-do/legal-awareness/> last accessed 10 Dec 2019

Resource Centers (SRCs) in Assam, Shillong, Jammu and Kashmir and Arunachal Pradesh.²¹⁰

The Access to Justice (GOI-UNDP) Project was a project implemented from 2013 to 2017 by the Ministry of Law and Justice, Department of Justice with the support of UNDP on the issue of ‘Access to Justice for Marginalized People’. As part of the project, legal literacy training programmes were conducted for faculty members and resource persons of the NLMA and the State Institute of Rural Development, Uttar Pradesh (SIRD-UP). Additionally, training on legal literacy was also provided to the State and District level coordinators of the NLMA. Further, two legal literacy training manuals were prepared in Hindi for the NLMA and the SIRD-UP.²¹¹ The project has also extended its support to the Tata Institute of Social Sciences established helpdesks, in observation homes in Maharashtra, for providing socio-legal guidance to juveniles. Other initiatives involve installation of voice-based legal information kiosks for providing information and raising general legal awareness of the public; legal literacy campaigns in Sehore, Madhya Pradesh and Barabanki, Uttar Pradesh etc.²¹²

The Department of Law, Ministry of Law and Justice, Government of India has, in collaboration with CSC e-Governance Services, also prepared a handbook titled the ‘Legal Literacy Project’ in an endeavor to enhance legal knowledge and awareness amongst the masses.²¹³ The handbook is a ready reference detailing several issues including the availability of free Legal Aid; issues such as domestic violence, assault, sexual harassment etc.; lodging an FIR; atrocities against members of Scheduled Castes and Schedule Tribes; filing an RTI under the Right to Information Act, 2005, etc

In order to teach functional knowledge of the law and in-still the basics of legal education right from the inception, the Central Board of Secondary Education (hereinafter referred to as the ‘CBSE’) in India has introduced ‘Legal Studies’ as a subject in Classes XI and XII from the academic year commencing 2013-2014. As a pilot project, the course was introduced in 200 schools whereby ‘legal

²¹⁰ Initiatives by Ministry of Law & Justice, Available at: <http://lawmin.gov.in/initiatives/initiatives-taken> last accessed 02 Nov 2019

²¹¹ Access to Justice Project, Government of India, Ministry of Law and Justice, Department of Justice, Available at: https://doj.gov.in/sites/default/files/150930-A2J-Project-info%20%281%29_0.pdf 02 Nov 2019

²¹² *ibid*

²¹³ Legal Literacy Project, Department of Justice, Available at: https://doj.gov.in/sites/default/files/English_final_1.pdf 02 Nov 2019

studies' was offered as an elective subject. Knowledge of the nuances of law enhanced a child's understanding of public affairs and generated awareness regarding their rights, duties and entitlements as a citizen. The course on Legal Studies included providing education regarding the theory and nature of political institutions, the evolution of the Indian legal system and the sources of law, the criminal and civil court structure and their processes, the institutional framework of the family justice system in India, arbitration, tribunal adjudication and alternate dispute resolution, human rights laws, international law as well as gave an insight into property, contract, tort and administrative law.²¹⁴

The module would also provide an exposure on the principles of law in civil and common law jurisdictions, the concept of precedents and the basic tenets of statutory interpretation. Further, the Council for the Indian School Certificate Examinations (hereinafter referred to as 'CISCE'), which conducts the Indian Certificate of Secondary Education (hereinafter referred to as the 'ICSE'), has also introduced 'Legal Studies' as an optional subject commencing from the academic year 2020-2021. It was felt that introduction of a skill-based professional course such as Legal Studies, as part of the curriculum, would help students chose a future in the legal field which was otherwise an unexplored career option till under-graduation. The syllabus for Legal Studies under the CISCE included teaching on the historical evolution of the Indian legal system, law and jurisprudence as well as an insight into civil and criminal law and procedure, family law, tort, contract, consumer protection, intellectual property rights, property law, dispute resolution mechanisms and alternative dispute resolution.²¹⁵

To achieve the goal of access to justice, NALSA has strived to empower the youth by organizing Legal Literacy Clubs in schools. During the year 2018, 4328 legal literacy clubs were opened country-wide out of which 3001 literacy clubs were opened from January to March, 2018²¹⁶ and 910 literacy clubs were opened from April to June, 2018. The SLSAs were directed to open at least 5 legal literacy clubs in each district.²¹⁷

²¹⁴ Available at: http://cbseacademic.nic.in/web_material/Curriculum19/Main-SeniorSecondary/33_Legal_Studies.pdf last accessed 12 Aug 2019

²¹⁵ Available at: <https://www.cisce.org/pdf/ISC-Class-XII-Syllabus-2021/35.%20ISC%20Legal%20Studies.pdf> last accessed 11 Aug 2019

²¹⁶ Quarterly Legal Services Bulletin Issue No 1 of 2018, National Legal Services Authority Available at: <https://nalsa.gov.in/newsletter/7> last accessed 02 Sept 2019

²¹⁷ Annual Report 2018, NALSA, Available at: <https://nalsa.gov.in/library/annual-reports/>

NALSA along with the SLSAs, with their primary goal of legal empowerment and enabling the general public to comprehend laws and understand their rights and duties, continuously organizes legal service training camps, programmes, legal awareness discussions, legal literacy clubs and door-to-door campaigns. One such example is the Haryana State Legal Services Authority which, in an endeavor to legally empower women, organizes legal literacy classes in neighborhood and self-help groups with the aid of the District Child Welfare Officers/District Welfare Officers/ Protection Officers.²¹⁸ The Chandigarh State Legal Services Authority has directed that in every high school and college in the Union Territory ‘student legal literacy clubs’ are to be established comprising of students starting from class IX onwards and first and second year students in colleges.²¹⁹ The members/advocates of the SLSA are to conduct legal literacy classes for briefing the members of the club about the ways and means of imparting legal services by the SLSA, pre-litigation settlements of disputes, Lok Adalats and ADR generally. The SLSA is to make booklets, reading materials, leaflets, pamphlets etc. in the native language for furthering the objective of self-awareness amongst the masses.

In 2018, legal service camps were even conducted in far flung areas like Silchar, Jammu, Srinagar, Kargil and Leh. Overwhelming response to these programmes by the public coupled with support of Government functionaries and participation of the civil society, aided in enhancing outreach and effectiveness.²²⁰ Additionally, organizations like MARG, apart from conducting legal awareness workshops and programmes for stakeholders (NGOs, communities, students, Government functionaries etc.), also train community justice workers to function as legal resources within their communities. Along with providing training regarding various laws, they are also taken for visits to district courts, legal services authorities and exposure visits to understand the functioning of various state agencies and departments.²²¹ Legal literacy tools like training modules, literature and documentary films were developed on a plethora of laws

annual-report-2018 last accessed 04 Sept 2019

²¹⁸ Literacy Programmes, HSLSA, Available At: <http://hslsa.gov.in/misc/legal-literacy-programmes> last accessed 05 March 2019

²¹⁹ A Scheme for students legal literacy clubs, http://chdsla.gov.in/right_menu/schemes/pdf/files/legal_literacy_club.pdf last accessed 03 March 2019

²²⁰ Newsletter, NALSA, Available at: <https://nalsa.gov.in/newsletter/8> last accessed 12 March 2019

²²¹ legal Awareness, MARG(NGO) Available at: <https://www.ngo-marg.org/what-we-do/legal-awareness/> last accessed 02 Jan 2020

to ease understanding and enable the masses to access their rights.²²² The right to Legal Aid is a constitutional right which is covered under Articles 21 and 39A of the Indian Constitution. The paramount emphasis is on the provision of Legal Aid services is reflective from Article 39A of the Indian Constitution which deals specifically with the right to equal justice and free Legal Aid and was inserted in 1976 vide the 42nd Amendment Act. The Government of India in September 1980 appointed a Committee namely the 'Committee for Implementing Legal Aid Schemes' [CILAS] to monitor and run Legal Aid and advice boards and programmes in all States. Subsequently, in 1987, the National Legal Services Authority Act was enacted to establish a uniform system across the country for provision of free and competent legal services. In pursuance of the Legal Services Authority Act, 1987 and under the aegis of the NALSA, the Supreme Court of India has established the Supreme Court Legal Services Committee (hereinafter referred to as 'SCLSC') to provide Legal Aid and assistance for those who, because of deficiency of funds or social or economic backwardness or any incapacity, are unable to access the Supreme Court.²²³

Similar Committees namely the High Court Legal Services Committees (hereinafter referred to as 'HCLSCs') have also been established to administer and implement legal service programmes in relation to the High Courts. Further, the State Legal Service Authorities (hereinafter referred to as 'SLSAs'), District Legal Service Authorities (hereinafter referred to as 'DLSAs') as well as Taluk Legal Service Committee (hereinafter referred to as 'TLSCs') have also been set up to monitor Legal Aid programmes in relation to the States, Districts and Taluks respectively.²²⁴ Further, in addition to providing Legal Aid services, the State and District Legal Service Authorities also organize workshops for training of empaneled advocates.

The NALSA envisions promotion of an all-encompassing legal system in order to guarantee fair and equitable justice to the deprived sectors of society and to empower them legally through effective representation, literacy and awareness. Free Legal Aid and advice forms the primary function of the Legal Services Authorities. The Annual Report of NALSA for the year 2018 reflects that a total of 14,41,349

²²² Ibid

²²³ Supreme Court Legal Service Committee, Available at: <http://www.sclsc.nic.in/> last accessed 02 March 2020

²²⁴ <https://nalsa.gov.in/training-modules/training-module-part-1> last accessed 12 Jan 2020

persons were beneficiaries during the said year.²²⁵ Under the aegis and conceptualization of NALSA, National Lok Adalats have also been held across the country. Lok Adalats, conducted by the Legal Services Authorities, are based on the conciliatory principle and help expedite resolution of disputes. In the year 2018, out of a total of 3,38,917 prisoners who had visited the Jail Legal Services Clinics, 2,55,836 prisoners were rendered legal assistance in the form of Legal Aid and assistance, representations, drafting applications etc. During the year, a total of 22,665 legal service clinics have been functioning across colleges, universities, community centers, villages etc. wherein a total of 11,74,544 persons have been provided legal guidance. Promoting the purpose of Digital India, NALSA has gone a step further in modernizing service delivery and infrastructure by installing LED monitors in front offices in order to raise awareness regarding free Legal Aid through audio and video display.²²⁶ Statistical records of NALSA reflect that between the period April to June 2018, a total of 2,38,245 persons benefitted pan-India through the legal services provided under the Legal Services Authority Act, 1987.²²⁷

Specialized campaigns have also been conducted across all SLSAs for empowering inmates through legal consciousness and provision of Legal Aid services particularly women prisoners as well as those with children accompanying them in prison. These campaigns involved teams comprising of panel lawyers, psychologists, female doctors and NGOs working for the welfare and rehabilitation of female prisoners. Campaigns have also been launched for convicts to educate them of their right to free Legal Aid, the legal processes available for appeal, parole, furlough, remission etc. as well as information regarding status of their appeals/Special Leave Petitions (SLPs)/ bail applications etc. NALSA has additionally organized door-to-door campaigns in villages, slums and labour colonies to educate the disadvantaged sections of society regarding the accessibility of free Legal Aid services and to empower them so that they can emphasize upon their rights and improve upon the access to justice delivery system.

NALSA has formulated specialized preventive and strategic legal service schemes for survivors of sexual assault, disaster victims, mentally ill and mentally disabled persons, victims of trafficking and commercial sexual exploitation, drug abuse, acid attacks etc.²²⁸ It has

²²⁵ <https://nalsa.gov.in/library/annual-reports/annual-report-2018> last accessed 10 Jan 2020

²²⁶ <https://nalsa.gov.in/newsletter/8> last accessed 10 Jan 2020

²²⁷ *Supra* n 222

²²⁸ Preventive & Strategic Legal Services Schemes, NALSA, Available at:

established a Legal Aid delivery based model namely the Legal Aid Defense Counsel System for providing Legal Aid, advice and assistance to the accused and convicts in criminal matters.²²⁹

The UNDP in collaboration with the Department of Justice, Ministry of Law and Justice had launched a Project on ‘Access to Justice for marginalized people’ in India in 2009. The aims of the Project were two-fold namely, to equip the unfortunate and under-privileged sections of society to pursue and demand justice as well as to make better the institutional capabilities of key justice service providers so that they can efficiently help the poor and disadvantaged.²³⁰ The primary focus of the Project was on strengthening the access to justice for women, scheduled class, scheduled tribe and minority communities, in particular. The Project helped in improving legal and representational capacity of civil society organizations and networks, enhanced legal awareness and supported national and local Legal Aid delivery institutions such as NALSA, SLSAs and DLSAs.

The National Law University, Delhi under the aegis of the University Grants Commission Research Award 2012-14 conducted an empirical study on the ‘Impact analysis of the Legal Aid services provided by the empaneled legal practitioners on the Legal Aid system in the city of Delhi’. The research focused on the evaluation of the capability and obligations of the Legal Aid counsels in their delivery of Legal Aid services, methods to overcome difficulties faced by major stakeholders and feasible solutions to improve the quality of Legal Aid across the state.²³¹

AALI, a feminist legal advocacy and research group, focusses on women’s rights issues. It undertakes research, advocacy and Legal Aid support activities, often in partnership with other organisations at the local, national, and international levels, in cases of violation of human rights of women.²³² Another organisation, the HRLN, partners with coalitions and social movements in India which ensures free Legal Aid and legal literacy programmes. The coalition comprises

<https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes> last accessed 20 Feb 2020

²²⁹ Legal Aid Defense Counsel System, NALSA, Available at:

<https://nalsa.gov.in/acts-rules/guidelines/legal-aid-defense-counsel-system-2> last accessed 21 Feb 2020

²³⁰ Increasing Access to Justice for marginalized People: GoI-UNDP Project, Available at: https://doj.gov.in/sites/default/files/Increasing-A2J_0.pdf last accessed 04 sept 2019

²³¹ Dr. Jeet Singh Mann, “Impact Analysis of the Legal Aid Services”, Research report, 2012-14, Available at <http://nludelhi.ac.in/download/2017/dec-2017/UGC%20Research%20Award%20in%20Law%202014.pdf> last accessed 20 Jan 2020

²³² Supra n 204

of NGOs, academicians, students, activists, researchers, judges and lawyers. HRLN provides pro bono legal services and assistance, undertakes public interest litigations to advance human rights issues and organizes lectures, workshops, training and awareness programmes for Government Departments including the Police. Majlis, is another society and public trust, which works towards providing access to justice for all women. It collaborates with Community based organisations in imparting legal awareness and free Legal Aid services to women from marginalized sections of society. Majlis, in collaboration with the DLSA, has promoted the cause further by encouraging consultation and co-ordination between Legal Aid lawyers, NGOs, Protection Officers and victims of domestic violence.²³³

All the relentless and untiring efforts made by the Government agencies, NALSA, SLSAs, DLSAs and NGOs have cumulatively helped in raising awareness and consciousness regarding the availability and accessibility of Legal Aid and assistance services amongst the disadvantaged and lesser privileged members of society. Pro bono legal activity rendered is now also a pre-requisite for designation as a senior advocate.

12. GLOBAL EFFORTS ON ACCESS TO JUSTICE

The Department of Justice, Ministry of Law and Justice, Government of India had, in collaboration with the United Nations Development Programme (hereinafter referred to as the 'UNDP'), partnered and implemented three Projects namely 'Strengthening Access to Justice in India' from the period 2006-2008, 'Access to Justice for marginalized People' from the period 2008-2012 and 'Increasing Access to Justice for marginalized People' from the period 2013-2017.²³⁴ UNDP, through these projects, aimed at expanding access to justice to reach people living in the impoverished districts in India and helped them gain awareness about their rights and entitlements. These Projects involved participation of the National Legal Services Authority, the State Legal Service Authorities, the Ministry of Human Resource Development, the Ministry of Women and Child Development, the National Mission for Empowerment of Women and the National Law Universities.

The project 'Access to Justice for Marginalized People' had, as

²³³ Supra n 201

²³⁴ United Nations Development Programme, Partnership with Department of Justice, Ministry of Law and Justice, Available at: https://www.undp.org/content/dam/india/docs/Fact_Sheets_Law_&_Justice.pdf accessed on 02 Nov 2019

its primary focus, legal empowerment of the marginalized groups by providing them with justice services.²³⁵ The Project aimed at enhancing access to justice especially for the marginalized group particularly women, minorities and members of the scheduled caste and scheduled tribes by supporting strategies and initiatives seeking to address the barriers faced by them due to absence of awareness, unapproachability of Legal Aid as well as absence of other support services to enable access to justice.²³⁶ The Project was implemented in two phases i.e. from May 2009 to December 2012 and from January 2013 to December 2017 and had a two-fold purpose viz. to make better the established capacities of the justice service providers to empower them to effectually serve the deprived people as well as to directly empower the underprivileged strata of the society to demand justice.

As part of the Project, a Judges' Training Manual on laws and problems concerning the marginalized groups as well as a Training Module for Judges on Anti-Human Trafficking were released. The Project also involved a study and compilation of good practice models on Legal Aid and empowerment across four different jurisdictions i.e. Sierra Leone, Indonesia, South Africa and Malawi which could be replicated in the Indian legal context. The Project further included a study on law schools based legal service clinics which assessed the condition, nature and quality of activities undertaken in legal service clinics across 7 states in India viz. Orissa, Bihar, Chhattisgarh, Jharkhand, Uttar Pradesh, Madhya Pradesh and Rajasthan. The Justice Innovation Fund was created as part of the Project for legal empowerment of marginalised people and capacity development of the intermediaries who assisted them. 7000 paralegals and 300 lawyers were trained and sensitised as part of these capacity development events. Additionally, the Project supported a series of paralegal training programmes conducted in the states of Odisha and Uttar Pradesh by the State Legal Service Authorities. The National Mission for Empowerment of Women (NMEW) was also supported by the Project for conducting action research on access to justice for women in the North East. The study also examined the participation and representation of women as part of the justice delivery system.

²³⁵ Supra n 226

²³⁶ International conference on "Equitable access to justice: Legal Aid and legal empowerment" Organised by Department of Justice, Government of India and The UNDP on 17-18 November 2012 at New Delhi, India. Available at: <https://www.undp.org/content/dam/india/docs/DG/equitable-access-to-justice-legal-empowerment-legal-aid-and-making-it-work-for-the-poor-and-marginalised.pdf> last accessed 20 Sept 2019

The Project sought to pilot a legal awareness initiative using information and communication technology. Information relating to Legal Aid, empowerment and awareness was digitised to be uploaded on voice-based kiosks in order to assist people in learning about their rights and entitlements.²³⁷ As a result of this partnership between the UNDP and the Government of India, legal information centres and mobile Right to Information clinics have been set up and radio and training programmes have also been launched.²³⁸

Another Project is the India Justice Report, 2019 which is an initiative of the Tata Trusts Foundation undertaken in collaboration with, amongst other organisations, the Commonwealth Human Rights Initiative (CHRI) which is an independent, non-profit, international NGO working in the field of human rights.²³⁹ Through its research, advocacy and reports, the CHRI has drawn a lot of traction to the growth and impediments to human rights in Commonwealth countries.

The purpose of the India Justice Report was to invite attention of all stakeholders in the system on two areas of primary concern viz. access to justice and conditions of the institutions working towards justice delivery. The Report helped provide a complete comprehensive understanding of all key stakeholders in the India justice system i.e. the Police, the Prisons, Legal Aid and Judiciary as well as analysed and brought to light several systemic shortcomings in the system.²⁴⁰

Another step towards access to justice is the collaboration of the Centre for Policy Research in India with ‘Namati’, an international organisation working towards the cause of legal empowerment and advancing justice by equipping people to know, use and shape laws that affected them.²⁴¹ The Centre for Policy Research is a non-profit, independent institution and one of India’s leading public policy think tank. Namati works across numerous countries including India, USA, Myanmar, Kenya, Mozambique amongst others. Globally, Namati convenes the Global Legal Empowerment Network with members from over 160 countries comprising lawyers, paralegals, human rights activists, educators, researchers, public servants etc.

²³⁷ Supra n 232

²³⁸ Supra n 201

²³⁹ India Justice Report: “Ranking States on Police, Judiciary, Prisons and Legal Aid”, 2019 Published by Tata Trusts in Oct, 2019, Available at: <https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf>

²⁴⁰ *ibid*

²⁴¹ Supra n 184

who collaborate on overcoming common challenges faced by all and were dedicated towards attaining grassroot justice. The community has successfully advocated for the inclusion of 'Access to Justice' in the 2030 Sustainable Development Goals.²⁴²

13. CONCLUSION

The study on 'Access to justice in India' aimed to look at legal system and legal aid in India. It is a critical appraisal of the system in our country with special mentions of the unique points and the shortfalls. Country as vast as India faces lots of challenges and has also devised beautiful ways to provide justice across length and breadth of our country. The study has tried to evaluate and critically analyse each part of the questionnaire. We have discussed the framework improvement of access to justice.

First part deals with the general information about our country. It talks about history of independence, population and rights of the people of India, and the democratic setup of the country. It discusses about legislature, and election of PM and the President of the country is incredibly diverse in terms of political identities, including castes, communities, tribes, economic classes, ethnicities, languages, customs and religions. Indian Constitution serves as the basis for the operations of the Executive, the Legislature and the Judiciary with a decentralized system of governance. Indian judiciary has an integrated court system that administer Union and State laws. Judicial System of India consists of the Supreme Court, High Court, District Court or Subordinate Court. The discussion moves on to liberalization of Indian economy in 1991 and has since then made considerable growth in its gross Domestic Product (GDP). According to the Inclusive Development Index, declared by World Economic Forum 2018, India finds place in emerging economies. But the report also revealed inequality in the workplace, with women receiving 34% less wages than male counterpart for the same work (World Economic Forum, 2019). The report reflects deprivation of shelter, water, sanitation, health and education. Unemployment rate and lack of education in the country is also discussed.

Second part deals with the legal system in India as a byproduct of the common law influences of the colonial British rule and the Government of India Act, 1935. It also discusses the personal law influences India has a bicameral parliamentary system, with the lower

²⁴² Supra n 184

house being House of People (Lok Sabha) and upper house being Council of States (Rajya Sabha). President is the executive head at the Centre. The executive head of the States (provincial units in India) is the Governor with most of them having a single legislative body called as the Legislative Assembly. India follows a uniform system of justice delivery. It is a pyramidal structure with the Supreme Court at the top and High courts at the States along with numerous subordinate courts respectively at the bottom. In the stricter sense of the term, India does not follow the federal structure. There is one Unified Judiciary, yet there are no separate federal courts to exclusively decide federal matters. All the Fundamental Rights and the Constitution are upheld by the Judiciary. The courts follow adversarial system in which both the parties present arguments before an impartial judge who would not indict the accused unless the case has been proven beyond reasonable doubt by the prosecution. General Functions of Courts in India and Hierarchy of Courts in India with their jurisdictions has been discussed. Village courts at Panchayat levels are also elaborated. The country's legal system has evolved tremendously from its colonial past to the independence struggle following globalisation. India though is quasi federal State in character, yet the bar has a unified structure with the Bar Council of India at the helm of affairs. The legal profession is governed by the Advocate's Act, 1961 which has been discussed in detail.

Process and proceedings have been dealt in the third part. It gives an overview of Criminal and Civil Procedure in India. In criminal law, any kind of investigation happens subsequent to a crime. There shall be an offence committed under the Indian Penal Code 1860, Code of Criminal Procedure 1973 or under any other special laws in force. The investigation process is discussed in detail. A civil matter begins with the involvement of two or more parties, where one of them is aggrieved and approaches the court for a specific remedy in the form of compensation, specific performance, injunctions etc. This is dealt under Code of Civil Procedure 1908. ADR mechanism is also dealt in detail. There are different ways in which a matter is sent to mandatory alternative dispute settlement. In India, as soon as a matter is filed, parties are provided with options to settle their disputes alternatively, without resorting to judicial remedy. This provision is there for two reasons, firstly, to reduce the burden of cases and the increasing of pendency upon the courts and secondly, for a quick settlement of disputes in a time bound manner. The parties are to choose from the options provided for ADR, unless they have been exempted by the court. The judicial system in India is amongst the

oldest in the world but due to the miniscule people to judges ratio, the pendency of matters was just piling up on an everyday basis. This situation did not change despite establishing fast track and evening courts in many states.

Part IV and Part V shows how ‘Access to Justice’ is a problem which not only plagues the legal community of our nation, but is a concern at the international level as well. There are various conventions dealing with this problem and providing legal aid to the needy individuals is the essence of these conventions. While the conventions appraise of the theoretical aspects, i.e, how legal aid is meant to be, but its effectiveness can only be gauged by looking into how it is put into practice. Right to legal assistance is a constitutional and fundamental human right. By complying with the international human right instruments advocating for legal assistance such as International Covenant on Civil and Political rights (ICCPR 1968), India also amended its Constitution in the year 1976, by way of 42nd Constitutional Amendment Act to introduce provision for free legal aid. Thus, Article 39A under the Directive Principles of State Policy provides for ‘Equal Justice and Free Legal Aid’ to the people and mandates that “ the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Hence, the Legal Services Authorities Act, 1987 was enacted under the Constitutional mandate to provide legal aid by constituting legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Few stakeholders are aware of the existence of the legal aid cell in the law schools and its purpose. There is acute lack of awareness regarding Legal Services Authorities Act, 1987, as well as the provisions of Article 39A and Article 21 of the Constitution. The project team could thus analyse whether the country achieved success in imparting justice to those who fit the eligibility criteria for receiving free legal aid services. Regarding digitalisation, it was gathered from various studies that although it is serving a great purpose the efforts were not meeting desired results because of lack of awareness and lack of understanding of technology. Part V deals in detail with Legal Aid budget in India and also the system of implementation of legal aid.

Costs of resolving disputes within the formal judicial machinery

is discussed in part VI. Overview of judicial costs for litigants ,classes of costs, exemption from judicial costs and mechanisms to reduce costs by variations to courts and procedures is discussed at length. Part VII deals with protection of diffuse and collective rights . The rights under this question have been categorically classified into two broad areas: Diffuse rights and Collective rights. These rights entail right to have clean and healthy environment, right to self-determination etc. In India, these rights are generally promoted by domestic statutes which have specifically adopted the international guidelines and protocols. This theory of Specific Adoption states that nations can explicitly adopt the international protocols and guidelines with the help of specific domestic legislations. Article 253 of the Indian Constitution, 1950 brings home the above-stated proposition. Not only these central laws prevailing over the entire territory of India are ensuring right to protection of environment but there are innumerable state laws as well to ensure the similar objectives. However, collective rights are enjoyed by the group and not individually. So, enforcement rights against the state entity come under its domain. So, Public Interest Litigation under the Article 32 and 226 of the Indian Constitution, 1950 are the clear exemplification of the collective rights. The redressal agencies under these rights can be the justice delivery system in India entailing Supreme Court, High Court.

Professional ethics are the standard code of conduct which professionals are expected to follow in India are dealt with in Part VIII. Certain judicial decisions are discussed in detail. The Indian Constitution imposes a duty upon the states to afford legal services to those who cannot pay for it themselves. Technological innovation in India to provide justice are discussed in Part IX. Digital technology has eased provision for legal services. Delhi Police provides certain services to citizens online such as lodging an e-FIR, reporting complaints online, lodging missing person report, domestic help registration, tenant registration etc. Other Government services such as applying for birth, death and marriage registration certificates, applications for PAN Card, Aadhar Card, Passport, issuing Record of Rights, issuance of caste certificate and domicile certificate etc. are all available online. and the matters connected therewith.

The e-Courts Project is an integrated mission mode. The Supreme Court of India has recently in November 2019, launched its office multilingual Mobile Application providing real time access to case status, display board, daily orders, judgments, office reports and circulars. The Department of Justice, Ministry of Law and Justice has also launched two services namely the Tele Law Mobile Application

as well as the Nyaya Bandhu (Pro Bono Legal Services) Mobile Application.

Constant efforts are being made to meet the unmet legal needs. The diversity of the country makes it susceptible to unmet demands but the efforts are on. Public Legal education through National Legal Service authorities (NALSA)and State legal service authorities(SLSA) are discussed in Part X and XI. Part XII deals with globalised efforts of our country to deal with establishing rule of law and providing justice to all . The study sums up the report by discussing the major findings of the study, thereafter outlining the conclusion of the research by way of analyzing the system of justice. In the beginning, the focus was on collective enforcement of social, economic and cultural rights, and not individual legal action but over the years, legal aid has come a long way and its concept has evolved. As a result, its ambit has also widened and now it covers a variety of services including representation by an advocate, preparation of pleadings, drafting of legal documents, advisory, obtaining certified copies of orders, payment of all court fees, etc.

Looking at the national legal framework including both constitutional and statutory framework, it becomes clear that the State is under an obligation and mandate to provide free legal aid to its citizens, irrespective of their economic and social status, who is unable to secure legal services on account of indigence, and whatever is necessary for this purpose has to be done by the State. Since the aim of the constitution is to provide justice to all and the Directive Principles are in its integral part of the Constitution, the Constitution dictates that judiciary has duty to protect rights of the poor as also society as a whole. All these provisions including the development of new aspects by the judiciary has helped to expand the scope of legal aid in India.

Instead of changing the entire structure of the Indian legal aid system, it is required that gaps which have been created in the existing system should be bridged with the help of various effective measures which act as key ingredients to a successful legal aid system in India. Successful legal aid programme in India requires the stakeholders to embark on a mechanism to inform and educate the public of its right to free legal aid. Further, the government must employ more effective processes to improve legal aid delivery system in the country.

This report while dealing with digitalization in legal aid very clearly highlights the importance of digitalization in the legal field. Considering the various advantages which this digital platform

offers like speed, accuracy and non-degradation of data during transmission, further its processing, storage and transmission etc. the idea of digitalization in the legal field is strongly advocated in this report. Since the legal system, by its very nature, is labour-intensive and the legal process time-consuming and lengthy, it is quite obvious that application of technology will make a lot of difference especially with regard to the safe preservation and timely retrieval of the relevant data. The discussion on the global trends with respect to the digitalization in the legal field highlights the tremendous benefits which the employment of technology has done to this field. Availability and accessibility of large amount of legal data not only to legal practitioners, researchers, and law students but also to litigant parties owing to digitalization is a commendable step easing out the complexity of this legal field to a great extent. Apart from the easy and hurdle free availability of legal data, the digitalization in the legal aid services is an excellent way of informing the litigant parties (especially the litigants from the economically weaker section of the society) as to the legal practitioners who are rendering legal services pro-bono.

The detailed discussion on the government's effort in this regard highlights the praiseworthy and applaudable steps taken by it in order to further the digitalization in the legal aid which consequently has undoubtedly eased the various tedious legal tasks and the matters connected therewith. For example, the 'Tele Law Portal', which seeks to facilitate the delivery of legal advice, by connecting lawyers having subject matter expertise with clients from marginalized social sector through video conferencing at various special centres set up by the Legal Services Authorities. Further, the Supreme Court led the digitalization of one crore five lakh pages and records of civil appeals from pre-independence era till the year 2002 is a commendable step with regard to the matter at hand. The Integrated Case Management System (ICMS), the National Judicial Data Grid, the E-Courts project etc are other examples highlighting the advent and consequential benefits of digitalization to this legal field and specially the arena of legal aid. It is noteworthy that the Nyaya Mitra program which was launched in 2017 to collaborate with the e-courts could render admirable assistance in resolution of cases that have been pending for more than ten years thereby reducing pendency of litigation in courts. Considering that there is every year increase in the internet users and the ubiquitous presence of internet, it is important as well as the demand of this digital age we are heading towards more use of technology in almost every field like communication, banking, education etc. and legal field is no exception to it.

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Dr. Neelu Mehra