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CRITICAL ANALYSIS ON ARTICLE 39A

~Vidhi Kapoor & Shubhangi Chand¹

Abstract

This paper examines the critical analysis of Article 39A . Article 39A contributes to the public welfare by providing equality before the law. It contributes to upholding equality before the law by allowing individuals who cannot afford legal assistance to have their day in court and simplicity in Legal Procedures. It promotes the legal system to be simple and accessible so that any individual can navigate it or seek legal aid if needed. There are authorities like NALSA (National Legal Service Authority) and SALSA (State Legal Service Authority) which also include the district, state and central authorities of the legal system. The main and essential objective of the state and national authorities is to provide the utmost security to the disadvantaged and impoverished people. Article 39A of the Indian Constitution is high in significance, which provides the right to seek legal aid. It puts up an obligation on the state that it is the state's duty to provide security of the right and the need to provide free legal aid with reasonableness. This article examines the need, and contribution of Article 39A and the role of state and national authorities in ensuring equal justice to all citizens. There are numerous legal challenges which are faced by the majority of the impoverished people in the society which involves lack of awareness among these people, lack of uniformity in services which are provided to them, expensive fees of lawyers and the court and limited access to the resources.

Keywords

Article 39A, Legal aid, NALSA, SALSA, Challenges

¹ You may contact the author at the following email address: vidhikapoor792@gmail.com & chandshubhangi@gmail.com.

INTRODUCTION

Our nation's father Mahatma Gandhi stated that “My notion of democracy is that, under it the weakest shall have the same opportunities as the strongest”.² Talking about Mr. Gandhi’s Notion of democracy which he said while he was interviewed by an American journalist at Sevagram in April 1940. But, the democracy he wanted was established approximately 36 years later by the Constitution's (42nd Amendment) Act, 1976³, which is named Legal aid. Legal aid is an aid defined in Article 39A of the Indian Constitution, that provides free legal assistance to people who are actually in need and cannot afford it due to their inability or disability and cannot bear the expenses of the legal services. It is provided to the people by the state, so as to ensure justice regardless of their disabilities. The entitlement to free legal assistance is thus limited only by the amount of cash made available to the state legal service authorities in any particular year by the National Legal Service Authority. In order to accomplish the primary objective of providing legal aid to all citizens, Article 39A must be considered as an aspect of a process larger than the end in itself. The key aspects of the article also involve high significance as it is a constitutional provision, which provides the right to seek legal services and this article also states that it is the duty of the state to provide security to this right. Legal aid is crucial as there will be no possibility of having constructive legal resources without its access. Seeking legal remedy is always the first step for rectifying grievances. When the citizens of the country are affected, they cannot be denied the right to exercise the free aid, that person’s complaint will remain disregarded and the efforts made to provide it would be worthless. Based on Article 39A, the Indian government enacted the “**Legal Services Authorities Act, 1987**”, which provides legal framework for provision of legal aid in India. Under this act, the “**National Legal Services Authority**” (NALSA) and “**State Legal Services Authorities**” (SLSAs) were established to expedite the implementation of legal aid initiatives and schemes at the national and state levels, respectively. This provision of the Indian Constitution ensures the legal structure for the provision of free legal help in India, by bringing out the significance of equal opportunity for justice and the duty of the state in removing barriers

² *Speech by the president of India at the inauguration of the fourth Retreat of Judges of the Supreme court, Press information Bureau (Government of India) President’s Secretariat (April 16, 2016), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=138918#:~:text=It%20is%20worth%20recollecting%20here,sa me%20opportunities%20as%20the%20strongest%E2%80%9D>.*

³ *Equal Justice and Free Legal Aid, Constitution of India, <https://www.constitutionofindia.net/articles/article-39a-equal-justice-and-free-legal-aid/#:~:text=It%20was%20inserted%20by%20the,second%20Amendment>.*

that may prevent people with disabilities from getting justice due to economical conditions. In order to accomplish the primary objective of providing legal aid to all citizens, Article 39A must be considered as an aspect in a process larger than the end in itself.

LEGAL CHALLENGES OF ARTICLE 39A

1. INCREASING PUBLIC AWARENESS REGARDING FREE LEGAL AID:

Article 39A includes various challenges and requires a multifaceted approach, it also includes public awareness about free legal aid services by improving the facility and quality of legal representation. There must be a deliberate effort to decrease disparities in the accessibility of legal services across the country. In addition, if this process will be followed the impoverished sections of the society will also be able to get justice by speedy trials which will be provided by the honorable court.

2. LEGAL AID IS A RIGHT:

Therefore, Legal Aid is not a charity, it's a constitutional right of the people. However, enforcing this right presents complications. There is no clear system for holding the state accountable for failures in providing legal help, and those who fail to receive assistance with their cases have limited choices. The Supreme Court of India clearly represents that this right when it was imposed had faced a lot of difficulties on its own.

3. DISPARITIES WHICH ARE ARISING GEOGRAPHICALLY:

India is the one of the most diverse countries in the population in the world which also has a vast culture, as India is also facing a lot of legal aid disparities which includes the availability and quality of legal assistance in urban and rural areas as well as in different states. Because of this geographical inconsistency, the guarantee of equal justice under Article 39A cannot be met consistently throughout the country.

4. QUALITY OF LEGAL ASSISTANCE:

The people in rural also in urban areas are not getting equal quality of legal representation provided under legal aid schemes. Lawyers are also burdened with cases hence they are charging an ample amount of money and most of the people are not able to pay the fees of the lawyers. Many of the

people are not able to afford to hire the private attorneys for discussing their matters. It also states their economic background respectively. ⁴

5. CHALLENGES OF THE ORGANIZATIONS:

The authorities like the National Legal Services Authority (NALSA) and State Legal Service Authority (SALSA) have their own set of difficulties. These include bureaucratic delays, a lack of collaboration among many organizations, and a lack of infrastructure. As a result, the system is inefficient and struggles to fulfill Article 39A's objectives. Thus, it also lacks in providing equal opportunities, free legal services, and equal justice to all the impoverished sections of the society.

6. LIMITED SCOPE OF LEGAL REPRESENTATION:

Due to the “**socio-economic conditions of the people,**” there are many legal aid services that are not able to reach or cover all types of legal challenges for all the people who are in need of the legal services. Also, there is a shortage of legal aid lawyers as per the study of 2018, one lawyer was available for 18,609 people and five lawyers were available for 100,000 population.

7. POLICY AND STATUTORY FRAMEWORK:

The policy and statutory framework should be made much stronger to address the major challenges of Article 39A. There is a need for a comprehensive legislation system for the poor sections of society so that they can also enjoy their constitutional rights such as “**Free Legal Aid**”. Thus, if there is such a mechanism or framework there will be a stronger foundation for the legal aid system and people can ensure the criteria of Article 39A.

Also, there are three legal aid committees which also have been set up for the betterment of society and specially for the needy sections which are as follows ⁵:-

- 1) The District Legal Aid Committee;
- 2) The State Legal Aid Committee;
- 3) The Taluka Legal Aid Committee;

⁴ *Constitutional provisions relating to free legal aid in india : an analytical study, legal service (April 09,* <https://www.legalservicesindia.com/law/article/3036/10/Constitutional-Provisions-Relating-To-Free-Legal-Aid-In-India-An-Analytical-Study->

⁵ *Concept of legal aid in India, India Justice Foundation (August 18, 2018)* <https://indiajusticefoundation.org/concept-of-legal-aid-in-india/> (hereinafter concept of article 39A).

While Article 39A represents the principles of a just society, fulfilling its goals faces challenges with legal complexities. Overcoming these problems will need an integrated strategy that involves increasing resources, raising awareness, overcoming social stereotypes, enhancing the quality of legal assistance, making use of technology, and strengthening the policy framework. It is a path that demands perseverance, creative thinking, and an unshakable determination to the ideals of just, equal, and fair society.

THE ROLE OF STATE AND AUTHORITIES

Article 39 A talks about 'equal justice and free legal aid', Under this provision of the constitution, it is ensured that no citizen should be deprived of enjoying the opportunity for securing justice on the basis of economic or other disparities. In 1995, when the "Legal Services Authority Act" came into force, free legal services were made available throughout the country; it was enabled for all the people who were socially and economically disadvantaged. Although the society has been changed and this particular provision of the constitution has contributed to the society, the challenges still persist in the contemporary society which refrains this article from enacting till it's full potential and therefore it denies the poor the right to access to justice. Our country has always been dependent on the theory of 'Rule of Law' which was founded by Edward Coke and it has been developed by A.V Dicey in 1885, which consists of primarily three principles, which are:

- 1) Supremacy of Law
- 2) Equality before the law
- 3) Equality of Law

In order to be prevalent in a democratic society, rule of law, specifically, should ensure that everyone should have access to justice, a bit more focused on the poor and socially disadvantaged sections. The state shall ensure that all the people should be treated equally before the law and should have equality of access to law as mentioned in Article 14, of the Indian Constitution. ⁶

Article 39 A has been enshrined in the constitution in 1976, by the parliament, therefore establishing legal assistance which will be free of cost as a basic principle. This conception was given more emphasis after the ratification of the Legal Services Authorities Act in 1987 and

⁶ Akarshita Singh, *Legal Aid in India: current scenario and future challenges*, Manupatra Articles (December 11, 2023) , <https://articles.manupatra.com/article-details/Legal-Aid-in-India-current-scenario-and-future-challenges>.

afterwards gained more weightage by NALSA (National Authorities Legal Services Act) in 1995. There have been several legislations which has come into force in accordance with Legal Aid which are:

- 1) Bar Council of India
- 2) Bar Council of India Legal Aid Rules, 1983
- 3) And Legal Practitioners (Regulation and Maintenance of Standards in the profession, protecting the interests of clients and promoting the rule of Law) Bill, 2010

At the same time, in spite of having these legislations in force, there's a hollow gap in the efficient functioning of this article.

In our country, this provision was added to provide free legal services and equal justice to all, this provision has a few key components which are as follows:

- 1) This provision is granted to us as a **constitutional right**, which is enshrined in the Indian constitution, which states that.
- 2) It gained more weightage, after the Legal Services Authorities Act, 1987, the act provided a framework which is statutory for this provision in India. Several other authorities like NALSA, and SLSAs got established and came under this act
- 3) The eligibility criteria of this provision basically include all the individuals who are socially, economically disadvantaged or marginalized, conclusively all the vulnerable groups in the society.
- 4) The services which are provided under this provision are free legal advice, the court representation, legal documents drafting, and all the other sorts of legal assistance. Also, it covers a wide area of legal matters, and all sorts of legal matters, like matters regarding crime, civil matters, family disputes, etc. The services have been provided through the way of Clinics of Legal Aid, which are set up in different parts of the country, which ensures to provide the needful legal services from the very bottom, grass-root level. Usually, Lawyers and paralegals are running clinics.

Our very foundation, the Indian Constitution, which is the preamble also mentions and promises the citizens, to secure justice, socially, economically, and politically, in order to fulfill the promise, the provision of the constitution provides legal services free of cost and help in securing justice

equally.⁷ The authorities have been enacted in accordance with the provision, like NALSA, which has been covered in the Legal Services Authorities Act, 1987 to ensure free legal schemes to the needed sections of society. The Patron in chief of the authority is the Chief Justice of the Country, and the executive chairman of the authority is the senior most Honorable Judge of the Supreme Court of the country. The authority is currently situated in New Delhi. The linchpin of the authority, which it is constructed upon is the awareness of the public, equality of the opportunities, and the justice which should be deliverable. The core objective of the authority is to bestow to the citizens specifically the needful sections, the legal services free of cost and to make sure that equal opportunities of justice should be accessible to all. One more function of the authority is to conduct Lok Adalats for the peaceful resolution of the disputes. Other than the mentioned functions, other functions include, the spread of the legal literacy and its awareness and covenant of social justice and the lawful procedures. Having the aim of targeting people out of all the diversities, the authority specifically sorts out or categorize the vulnerable, or socially disadvantaged, marginalized from the assorted population of the country and then generates various schemes, or come up with different initiatives to execute these schemes in an efficient manner so that it can contribute towards the society. The authority is closely affiliated with the other authorities and also works in accordance with those as well. This makes the process of the trade-off of the relevant information, keeping a continuous check and keeping updating the execution of the various schemes altogether easier. The motive of these initiatives is to bridge the gap between the legal system and the needed sections of the society, which promotes equitability and neutrality. Although, the state and the relevant authorities have come into handy in the implementation and in working towards the society, there has been constant persistence of the challenges. In spite of the fact that the provision has been ensuring and has laid down a very well built foundation for the equality of the justice system and the legal services free of cost, there has been barriers in its execution such as finite resources, deficiency of cognizance, and all the legal obstacles usually holds back the efficient execution of these services. To prevail over these obstacles, it is important to brace the legal infrastructure and spread cognizance about the accessibility of the free of cost

⁷ Introduction para. 3, National Legal Service Authority, <https://nalsa.gov.in/about-us/introduction#:~:text=The%20principal%20objective%20of%20NALSA,for%20amicable%20settlement%20o.>

legal services.⁸ Article 39 A is a crucial provision of the Indian Constitution which sustains the objectives of equality of justice and free of cost legal services. It ensures that access to justice should not be barred at any cost and it should be made available to all without any disparity on any ground. Although there have been persistent challenges, the continuous and on-going efforts taken by the government and the relevant concerned authorities will contribute towards the change of the society for good.

CONTRIBUTION OF ARTICLE 39A TO PUBLIC WELFARE

One of the pillars of our government which is the Judiciary plays a crucial role in bestowing free legal aid to needy sections of society. In 1979, the attention of the concerned authority which is the Supreme Court was drawn towards the issue, at that time a petition was filed in the court of law, and the bench at that time was being headed under Justice P.N Bhagwati, petition regarding the jail of Bihar and its prisoners, whose cases have been pending before the court of law. The petition was filed by all the prisoners collectively under 'Hussainara Khatoon' and the case name was 'Hussainara Khatoon v. State of Bihar', There was a delay in the prisoners' conviction and they had undergone a longer punishment due to that delay. On an immediate basis, the court of law released the prisoners and it was stated that it is not permissible to deny constitutional right to the state which provide speedy trial where there was a lack of resources. In some cases, Article 39A is sacrosanct consisting of reasonability, fairness, and a justified procedure.

There have been several other cases as well to signify how far does Article has contributed socially the public welfare like, 'SK Das v Union Territory of Arunachal Pradesh', where Justice P.N Bhagwati, emphasized spreading awareness so that the poor will be getting familiar with their rights. With the enforcement of the act of 1987, there was an initiative taken to minimize the stress of the Lok Adalats as an alternative method for resolving the disputes that are taking too much time for the judiciary.

Although there are significant developments, there's still a long road ahead in achieving all the outcomes and overcoming all the obstacles. There are various challenges to Article 39A, such as the quality of the services, there's a pre-conceived notion that because these are free-of-cost

⁸ Article 39A of India Constitution: Equal Justice and free Legal aid, Constitution Simplified (December 17, 2023), <https://constitutionsimplified.in/af/blog-post38>

services, the quality also won't suffice. The provided legal help will not be of standard and then again there's not much knowledge about these services that is why people are not aware about their such rights and this is the reason it's not being exercised. Then, comes the second barrier which is refraining the article in attaining the objective, the barrier is sensitization. Over time, the government has come up with a lot of policies, initiatives, schemes, and which have been proven significant also for society but there have been a lot of times when these schemes, and initiatives have not reached those for whom these have been created or implemented, in simpler words, it has not reached to the grass-root level same is with the Article 39A. Although the article is in effect it's still a little disorganized and is not fulfilling all the outcomes, the government has to take some severe steps in order to fix this. The ways the government can achieve this is through efficient campaigning, spreading awareness and a lot more ways. Then, comes the functioning of the lawyers. A lot of lawyers don't want to take up such cases because they're not getting paid adequately, that is why they just dispose of the matter in a hurried way which means that the justice has not been served adequately.⁹

These are the obstacles on the road to success, but there are a lot more ways through which there can be a better future. The first milestone to achieve would be spreading awareness because the population for whom this article is in existence, those people only are not aware of their rights and that's why they are unable to exercise it. Another step in order would be reducing the burden of courts by opting for alternate dispute resolution methods so that the concerned courts can focus more on such issues and work in a more organized way. Then, with the evolving technology a lot can be achieved, such as there can be online portals where free legal aid or services will be provided. It will make legal assistance more accessible. Then, promoting ADR (Alternate Dispute Resolution) Methods will also help serve the sections better. By altering the existing system and making changes for the better, the contribution of the article would be highly significant in society towards the public welfare.

CASE LAWS

1. HUSSAINARA KHATOON V. STATE OF BIHAR¹⁰ :

⁹ *Issues in implementation of free legal aid schemes Article 39A of the Constitution of India, IPLeaders (August 09, 2018)*, <https://blog.iplayers.in/article-39a/>

¹⁰ 1979 SCR (3) 532 - *Hussainara Khatoon v. State of Bihar*

The judgment stated by the division judge bench by Justice P.N Bhagwati and by Justice D.A Desai the Court emphasized that our Constitution strongly disregards discrimination based on rights and drew attention to the irresponsible behavior of our legal system, which failed to address discrimination within its area of authority. The Court held that the names provided by Advocate Pushpa Kapila Hingorani in her writ should be granted bail along with personal sureties since it infringes on their right to life which is covered under Article 21. The court gave attention to the irresponsible behavior of the judicial system in discriminating between the affluent and poor who are failing to ensure that every prisoner may enjoy their fundamental rights under Article 21, even after the Maneka Gandhi case.

2. SHEELA BARSE V. STATE OF MAHARASHTRA¹¹ :

It was stated as it is provided under Article 39A along with Articles 14 and 19, of the Indian Constitution, poverty-stricken people who are being detained should be provided legal help. Providing such help is an essential component of justice, and its absence may result in injustice, compromising the fundamental principles of democracy and the rule of law.

3. M.H HOSKOT V. STATE OF MAHARASHTRA¹² :

Justice Krishna Iyer stated Court shouldn't link the correctional method with jail imprisonment and reduced punishment. When numerous innocent people are at risk of becoming victims, justice is a heinous injustice. It was additionally decided that states should give free legal aid to people with limited incomes who cannot pay. With Articles 14 and 19, this case enlarged the scope of Article 21 while simultaneously addressing the issue of procedural and legal delays.¹³

4. ANOKHILAL V. STATE OF MADHYA PRADESH¹⁴ :

There are numerous cases where the punishments are given by death sentence, or life imprisonment which have a minimum of 10 years depending upon the severity of the crime The court determined

¹¹ 1983 AIR 378 - *Sheela Barse v. State of Maharashtra*.

¹² AIR 1978 SCC 1548 - *M.H Hoskot v State of Maharashtra*.

¹³ *Legal Aid – A catalyst for social change*, Legal service India.com, https://www.legalservicesindia.com/article/2079/Legal-Aid-Catalyst-for-social-change.html#google_vignette.

¹⁴ AIR 2020 SC 232 - *Anokhilal vs. State of Madhya Pradesh*, Criminal appeal no. 63-63 of 2014.

that the amicus brief in this case was not given adequate, time to prepare, which constituted an infringement of the right to seek legal help. This provision of the constitution describes the legal framework for the provision of free legal aid in India, emphasizing the importance of equal opportunity for justice and the duty of the state to remove barriers that may prevent people with disabilities from accessing justice due to their financial situation.¹⁵

5. BANDHU MUKTI MORCHA V. UNION OF INDIA¹⁶ :

The former Chief Justice of India, P.N Bhagwati has critically analyzed that one of the litigants from the party belonged to a poor section and he had not possessed any social and material resources with him or he could afford the high amount of fees of the lawyer. As long as India is still suffering from poverty poor and needy people exist in our society. She held that there is a severe need for free legal aid regarding impoverished certain sections of society, so they can also fight against strong opponents.¹⁷

CONCLUSION

The provision of the Indian Constitution which provides free of cost legal services to those who are in need of them, Article 39A creates the path for a society in which justice is not a privilege that belongs to the wealthy, but a fundamental guarantee for everyone especially for the impoverished sections of the society. The article outlines the idea that the state should guarantee that the legislative framework ensures justice is provided without any disparity; no citizen should be denied opportunities because of their economic conditions. The committees are also assigned to segregate the needed sections of society who are in requirement of legal aid, and the necessary assistance or representation of law. This provision requires the central government to offer legal assistance at the national level, as well as one at each state/union territory level. Authorities, such as NALSA and SALSA, are being established to provide legal assistance to underserved sections of the society. The authorities shall be held accountable for protecting and enhancing the right to free legal help for all people who all are in need of that. The main objective of this article is to have access to equal justice and equality of opportunity before the law to every citizen without any

¹⁵ https://main.sci.gov.in/supremecourt/2013/25955/25955_2013_6_1501_19251_Judgement_18-Dec-2019.pdf

¹⁶ *Concept of 39A, supra note 4.*

¹⁷ 1984 AIR 802 1984 SCR (2) 67 1984 SCC (3) 161 1983 - *Bandhu Mukti Morcha v. UOI.*

disparity on any ground. This article is one of the crucial elements of the country's legal system with the objective of ensuring equal access to justice for the needed sections of the society. And, therefore a lot of continuous work and efforts is required by the government and the concerned authorities in shaping the better future.

