International Journal of Political Science (IJPS)
Volume 11, Issue 3, 2025, PP 19-25
ISSN 2454-9452 (Online)
https://doi.org/10.20431/2454-9452.1103004
www.arcjournals.org

Legal Aid in the Age of Judicial Backlogs: Re-evaluating Article 39A as a Contemporary Governance Challenge

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Abstract: *India's constitutional promise of "equal justice and free legal aid" under Article 39A has acquired new urgency in an era of unprecedented judicial backlog. With more than five crore cases pending across courts and repeated calls from within the judiciary to address structural deficiencies in justice delivery, legal aid has moved from the margins of welfare policy to the centre of democratic governance. Yet scholarly treatments of Article 39A have largely remained normatively focused framing legal aid as an instrument of poverty alleviation or as a doctrinal extension of Article 21 without systematically analysing how chronic overload reshapes both its meaning and its effectiveness. This article examines how contemporary conditions of systemic pendency, coupled with the rapid expansion of schemes such as NALSA-led legal services, Lok Adalats, Tele-Law and other access-to-justice initiatives, reconfigure Article 39A as a test of state capacity rather than merely a directive principle. It argues that, under present conditions, legal aid functions less as an added protection for the poor and more as democratic infrastructure that sustains the very credibility of the justice system. At the same time, the article shows how reliance on low-cost, high-volume mechanisms to manage overload risks normalising scarcity and displacing attention from deeper questions of judicial capacity. Re-reading Article 39A through this lens, the article proposes a framework for evaluating legal aid not only in terms of coverage and awareness, but as a core indicator of constitutional governance in contemporary India.*

Keywords: *Article 39A; access to justice; legal aid; judicial backlog; democratic governance; state capacity; transformative constitutionalism.*

1. Introduction

1.1. Access to Justice Under Strain

In contemporary India, the constitutional promise of "equal justice and free legal aid" has come to coexist uneasily with an unprecedented accumulation of pending cases. Recent estimates suggest that more than 52 million cases are currently pending across all levels of the judiciary, with roughly 85 per cent concentrated in the subordinate courts. At the apex, the Supreme Court alone has recorded pendency figures exceeding 88,000 cases in 2025, despite sustained efforts at streamlining listing and disposal. These numbers are not merely indicators of administrative inefficiency; they raise deeper questions about what it means, in practice, to guarantee access to justice in a system structurally marked by delay. Against this backdrop, legal aid has been undergoing a striking, if under-analysed, transformation. The National Legal Services Authority (NALSA) and its state and district counterparts now preside over an expanding architecture of schemes that range from traditional legal services to Lok Adalats, mediation initiatives and targeted outreach. In November 2025, NALSA convened a National Conference on "Strengthening Legal Aid Delivery Mechanisms" to mark three decades of institutionalised legal aid and to reflect on new models of community-level access. Parallelly, the Union government's Tele-Law programme has been extended to around 2.5 lakh gram panchayats, providing pre-litigation legal advice to over ten million beneficiaries through village-level service centres. These developments, coupled with the approval of e-Courts Phase III with a financial outlay of ₹7,210 crore to promote "maximum ease of justice" through digital and paperless courts, suggest that access to justice has become a central preoccupation of governance reform. Yet, scholarly engagement with Article 39A the constitutional provision that enjoins the state to ensure equal justice and free legal aid has remained surprisingly static. This article starts from the premise that these strands can no longer be analysed in isolation. When tens of millions of cases remain pending and when new access-to-justice schemes are

explicitly justified as responses to this structural backlog, legal aid cannot be conceptualised merely as a safety net for the poor. Instead, it functions as a critical component of democratic state capacity: an institutional infrastructure through which the state attempts to reconcile its constitutional commitment to equal justice with the practical constraints of an overburdened system. The central question, then, is how chronic judicial backlog reshapes the constitutional meaning and practical effectiveness of Article 39A, and to what extent legal aid can serve as a viable instrument of democratic governance under conditions of systemic overload. To address this question, the article examines Article 39A and its jurisprudential development in conjunction with contemporary institutional reforms in legal aid and justice delivery. Drawing on constitutional decisions, statutory design and official reports on pendency and legal aid, it situates legal aid at the intersection of transformative constitutionalism, access-to-justice theory and debates on state capacity.

1.2. Article 39A and the Constitutional Imagination of Justice

Article 39A was inserted into the Constitution by the Forty-second Amendment in 1976, as part of a broader attempt to thicken the Directive Principles of State Policy into a more explicit welfare-state charter. Located in Part IV, it directs 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." Unlike earlier clauses that spoke in general terms of securing a social order or minimising inequalities, Article 39A is unusually specific: it identifies the operation of the legal system itself as a site of distributive concern and singles out "free legal aid" as a constitutionally mandated instrument for correcting the skewed distribution of legal resources. This drafting choice is significant for at least two reasons. First, it treats access to justice not merely as a by-product of good governance or judicial integrity, but as something that can be actively structured through legislation, schemes and institutional design. Second, by tying free legal aid to the broader objective of "equal opportunity" in the operation of the legal system, Article 39A implicitly acknowledges that a formally neutral legal order can nonetheless reproduce inequality if access to representation and advice remains stratified by class, caste, gender or geography. Judicial interpretation has reinforced and extended this understanding. Even before Article 39A was given detailed institutional effect, the Supreme Court began to weave the idea of legal aid into the fabric of fundamental rights. In Hussainara Khatoon v. State of Bihar, a series of petitions concerning the plight of undertrial prisoners in Bihar, the Court read the right to a speedy trial and the right to free legal services into Article 21's guarantee of life and personal liberty, treating them as "implicit in the guarantee of a fair and reasonable procedure." Subsequent commentary has emphasised that Hussainara did more than correct a localised injustice: it articulated a positive duty on magistrates and sessions judges to inform indigent accused persons of their right to state-funded counsel, effectively constitutionalising legal aid as a condition of due process. Indian socio-legal scholarship has deepened this reading of Article 39A as an instrument of social justice rather than a narrow procedural guarantee. Writing in the context of early legal aid and development debates, N.R. Madhava Menon argued that the point of legal aid was not simply to "extend the services of the Bar to the poor," but to reorient legal institutions so that they could engage meaningfully with the everyday problems of marginalized communities. Upendra Baxi's work on "access, development and distributive justice" similarly underscored that experiments such as Lok Adalats and panchayat justice schemes were intelligible only if one recognised that formal legality systematically privileged repeat-player "haves" over one-shot "have-nots" echoing, and extending to the Indian context, Marc Galanter's analysis of structural advantage in legal systems. At the same time, much of this literature was developed in periods when pendency, though serious, had not yet reached the scale now described as a crisis by judges and policy actors alike. Parliament's choice to implement Article 39A through the Legal Services Authorities Act reflected a concern with reach and awareness how to extend legal services to those outside the urban and middle-class orbit of formal courts. Early analyses of legal aid programmes focused on coverage, quality of representation and the extent to which legal aid penetrated rural and marginalised communities. Far less attention was paid to how structural delay and mounting backlog might interact with legal aid: whether the presence of legal representation could meaningfully advance the interests of poor litigants in a system where years-long pendency had become routine, and whether legal aid institutions themselves would be reshaped as the system moved into a chronic state of overload. This article builds on, but also departs from, the established reading of Article 39A. It accepts the core insight of earlier constitutional and socio-legal scholarship that legal

aid in India is part of a transformative constitutional project that seeks to democratise access to law. But it argues that, under contemporary conditions of systemic judicial backlog, Article 39A must also be understood as a lens through which to analyse the governance of scarce judicial and legal-aid capacity. When access to justice is constrained not only by poverty and marginalisation, but by the sheer inability of institutions to process existing caseloads in a reasonable time, legal aid cannot be conceptualised solely as an instrument of redistribution among litigants.

1.3. Access, Inequality, and the Limits of Formal Rights

Debates on access to justice have long emphasised that the existence of rights "on the books" does not guarantee their usability in practice. Cappelletti and Garth's multi-volume Access to Justice project famously traced three "waves" of reforms state-funded legal aid, representative and collective actions, and the development of alternative dispute resolution each aimed at closing the gap between formal entitlements and effective protection (Cappelletti & Garth 1978). Their core insight, that legal systems systematically reflect and reproduce underlying social hierarchies unless deliberate counter-measures are designed, has become foundational to subsequent scholarship on legal aid and procedural reform. Galanter's account of "why the 'haves' come out ahead" sharpened this critique by showing that the architecture of formal legality tends to favour "repeat players" such as state agencies and large organisations over "one-shotters," including poor and marginal litigants, even when the latter ostensibly enjoy the same rights (Galanter 1974). The advantages of repeat players better information, ability to play for long-term rules, capacity to absorb loss are magnified when legal processes are slow and unpredictable. Under such conditions, delay itself becomes a distributive device: those with resources can endure or strategically exploit it, while those without are priced out, coerced into compromise, or simply forced to exit the system. In this sense, backlog is not merely an efficiency deficit; it is a mechanism through which inequality is re-inscribed into the life of rights. Indian law-and-poverty scholarship has internalised and extended these arguments. Menon's early work on legal aid in India, for instance, argued that access to justice had to be understood as a composite of "legal literacy, legal advice, legal representation and remedial enforcement," and that failures at any of these nodes disproportionately burdened the poor (Menon 1982). Baxi, writing on experiments in panchayat justice and Lok Adalats, similarly insisted that the formal legal system could not be presumed neutral in a society marked by caste, class and gender hierarchies; instead, it should be analysed as a "site of struggle" over the distribution of institutional attention and recognition (Baxi 1982). These interventions repositioned legal aid from a charitable supplement to the Bar's services to a strategic intervention aimed at partially correcting the structural tilt of the legal system in favour of the "haves." Access-to-justice theorists have also drawn, explicitly or implicitly, on capability-based approaches to equality. Sen's distinction between formal opportunity and real freedom, and Nussbaum's emphasis on the capabilities necessary to live a life of dignity, provide a vocabulary for understanding legal aid as enhancing individuals' capability to use legal institutions, not merely their formal eligibility to approach them (Sen 1992; Nussbaum 2000). In such a frame, the denial or ineffective provision of legal aid appears not simply as a procedural lapse but as a restriction on substantive citizenship. What is less explored in this literature, however, is the way in which systemic judicial backlog interacts with these dynamics of inequality. Much of the classic access-to-justice scholarship was developed in contexts where delay was a recognised problem but had not yet assumed the proportions seen in India today. Contemporary Indian data suggest that pendency is not a marginal phenomenon but a defining feature of the system: a large proportion of cases in subordinate courts are more than three years old, and in several states, the ratio of judges to population remains well below recommended benchmarks. Under such conditions, the distributive effects of delay become central to any analysis of access to justice. For a poor litigant represented through legal aid, the question is no longer only whether she has a lawyer, but whether the combination of counsel, court and procedure can deliver a remedy within a time-frame that bears any relation to her social and economic reality.

1.4. Judicial Backlog as a Condition of Governance

The scale of judicial backlog in India today is not an episodic aberration but a defining structural condition under which the constitutional promise of access to justice must be interpreted. As of September 2025, more than 53 million cases were pending across all levels of the judiciary, with over 47 million more than 85 per cent concentrated in district and subordinate courts. At the apex, the Supreme Court's own pendency stood at over 88,000 cases in August 2025, a figure that has since edged past 90,000 according to the National Judicial Data Grid. The India Justice Report 2025 notes that

between 2020 and 2024, pending cases in Indian courts increased by nearly 20 per cent, even as judicial vacancies remained high and infrastructure expansion lagged behind caseload growth. These numbers acquire added significance when placed alongside the persistent deficit in judicial capacity. Official data and subsequent analyses converge on an estimate of roughly 21 judges per million people across all levels of the judiciary, far below both comparative international figures and the Law Commission of India's long-standing recommendation of 50 judges per million. In absolute terms, this means that around 21,000 judges are responsible for adjudicating disputes in a country of 1.4 billion, with wide interstate variation in sanctioned and working strength. Under such conditions, pendency is not simply a backlog to be "cleared"; it is the ordinary operating environment of the legal system. Seen from a governance perspective, this chronic overload imposes at least three constraints. First, it undermines the temporal dimension of rights. The constitutional guarantee of life, liberty and equality presupposes that adjudicatory institutions can respond within a time-frame that is meaningful in the life of the right-holder. When disputes over wages, housing, social benefits or criminal accusations are allowed to drift over years, the formal recognition of rights may coexist with their practical erosion. Second, backlog affects the credibility of the state as a whole. In a context where courts are repeatedly invoked as arbiters of constitutional principle, the perception that legal disputes vanish into decades-long queues can foster a sense that the state's commitment to justice is rhetorical rather than operational. Third, delay feeds back into social and administrative behaviour: officials and private actors may be emboldened to violate rights or contractual obligations if they believe that legal consequences are distant or unlikely. Contemporary policy responses have recognised backlog as a problem but have largely approached it through the lens of managerial reform. Successive initiatives ranging from special fast-track courts and time-bound campaigns to fill vacancies, to e-Courts digitisation, case-flow management, and performance dashboards seek to enhance the efficiency of existing institutions. The argument advanced here is not that legal aid and associated reforms are undesirable or that alternatives to formal adjudication are inherently suspect. Rather, it is that the contemporary configuration of judicial backlog and capacity constraints requires us to re-examine the place of legal aid in the constitutional order. When structural delay becomes normalised, legal aid is no longer merely a mechanism for bringing the poor into a functioning system; it is part of the way the system itself is reconfigured to cope with its own limitations. The next section turns to this evolving architecture of legal aid under Article 39A, asking how institutions designed to widen access are being deployed in practice in an overburdened justice system.

1.5. Legal Aid in Practice: Managing Overload

If Article 39A articulates a constitutional aspiration and judicial backlog describes a structural constraint, legal aid institutions are where the two now collide in practice. Since the enactment of the Legal Services Authorities Act, 1987, the architecture of legal aid in India has evolved into a multi-layered system: the National Legal Services Authority (NALSA) at the apex, State Legal Services Authorities (SLSAs) and District Legal Services Authorities (DLSAs) at the federal and local levels, and a network of Taluk-level committees, legal aid clinics, and para-legal volunteers. Together, they are tasked with identifying eligible beneficiaries, providing legal advice and representation, conducting legal literacy programmes, and organising Lok Adalats and other alternative dispute resolution initiatives. In recent years, this system has been both expanded and reoriented in response to the pressures of pendency. Lok Adalats once envisaged as informal, community-based forums for consensual settlement have been scaled up into large, periodic drives with national branding and centrally coordinated disposal targets. National Lok Adalats now routinely report the settlement of millions of cases in a single day across the country, combining pre-litigation matters with pending cases from regular courts. In parallel, NALSA and state authorities have institutionalised mediation schemes, particularly in family, motor accident and compoundable criminal matters, often with direct judicial encouragement. These developments attest to the system's search for mechanisms capable of delivering "quick and affordable justice" in the face of mounting caseloads. Tele-Law and other digitally mediated legal aid initiatives represent a further layer. By linking Common Service Centres in rural and semi-urban areas with panels of lawyers through video conferencing or telephone, Tele-Law seeks to decouple access to legal advice from physical proximity to courts or bar associations. In official narratives, this is framed as an attempt to democratise access by lowering geographical and informational barriers: citizens in remote areas can consult a lawyer about entitlements, documentation and legal strategy without incurring the costs of travel or engaging middlemen. Legal services authorities also deploy para-legal volunteers, legal literacy camps, and targeted outreach to particular

groups women, children, workers, persons with disabilities to identify justiciable grievances and channel them into appropriate forums. At the same time, the orientation of these institutions is increasingly shaped by the broader governance imperative of managing overload. Lok Adalats, for example, are celebrated as much for their contribution to reducing arrears as for their role in delivering justice. Success is conventionally measured in terms of the number of cases settled and the aggregate monetary value of awards, rather than through qualitative assessments of party satisfaction, power imbalances, or the voluntariness of consent. Similarly, mediation schemes are often evaluated by settlement rates and the extent to which they ease the burden on regular courts. Tele-Law is showcased in official communications through cumulative beneficiary counts and geographical coverage, even though relatively little public data exist on the outcomes of such consultations or on the extent to which initial legal advice translates into meaningful redress. This convergence of objectives widening access and reducing backlog creates a complex set of incentives for legal aid institutions. On the one hand, there is a genuine effort to extend legal services to those previously excluded: legal services authorities conduct legal literacy camps in rural and marginalised communities, recruit para-legal volunteers from within those communities, and attempt to identify disputes amenable to settlement without prolonged litigation. On the other hand, the emphasis on numerical disposal can tilt programmes towards low-intensity engagement: standardised settlements, limited time per case, and a focus on matters that can be quickly resolved, as opposed to those involving entrenched power inequalities or complex rights claims. In such contexts, the poor may be encouraged subtly or explicitly to accept compromise outcomes framed as "win–win" solutions, even when they might have had stronger claims in a fully contested adjudicatory process. Seen in this light, the evolving architecture of legal aid under Article 39A reflects a deeper transformation. Legal aid is no longer merely a means of enabling the poor to participate in an otherwise functioning system; it is an integral part of the way the system itself is being reconfigured to cope with its own constraints. The question, from a constitutional perspective, is whether this reconfiguration still honours the directive that the operation of the legal system promote justice on a basis of equal opportunity, or whether it entrenches a differentiated pattern of access in which some citizens receive full adjudicatory engagement while others are channelled into more summary forms of resolution. The next section takes up this question directly by rethinking legal aid as democratic infrastructure, rather than as a residual welfare entitlement.

1.6. Re-thinking Legal Aid as Democratic Infrastructure

The preceding analysis suggests that legal aid in contemporary India can no longer be adequately understood through the familiar lens of welfare provision alone. When judicial backlog becomes a persistent condition rather than a temporary dysfunction, legal aid is drawn into the core of governance, shaping how scarce adjudicatory resources are allocated and how different categories of litigants encounter the legal system. This shift calls for a conceptual re-orientation: from legal aid as an ancillary benefit extended to disadvantaged individuals, to legal aid as democratic infrastructure a foundational element that sustains the functioning and legitimacy of constitutional justice. Classical accounts of legal aid, both in India and elsewhere, have tended to frame it as a corrective mechanism within an otherwise neutral legal order. The implicit assumption has been that once representation and advice are provided, poor litigants can participate in the legal system on roughly equal terms with others. Such an understanding aligns with welfare-state logics of redistribution, in which targeted interventions compensate for market failures or social disadvantage. Yet, as scholars of access to justice have long noted, redistribution at the margins does not necessarily alter the underlying structure of legal institutions or the conditions under which rights are realised (Cappelletti and Garth 1978; Galanter 1974). In an environment of chronic delay, the limits of this welfare framing become especially pronounced. This infrastructural reading also clarifies the stakes of contemporary legal aid reforms. Initiatives such as Lok Adalats, mediation programmes and Tele-Law can be understood as attempts to stretch limited judicial capacity across a vast and diverse population. They represent pragmatic responses to overload, aimed at preventing the justice system from becoming entirely inaccessible to those without resources. At the same time, treating legal aid as infrastructure draws attention to the distributive consequences of such strategies. Infrastructure can be designed in ways that equalise access, but it can also entrench differentiation channeling some users towards faster, lower-intensity services while reserving more resource-intensive processes for others. In the context of legal aid, this raises the possibility of a tiered justice system, in which the poor are systematically steered towards settlement-oriented forums, while wealthier litigants retain greater access to prolonged adjudication and appellate review. Re-reading Article 39A through this lens underscores its contemporary relevance. The directive

does not merely instruct the state to provide free legal services; it mandates that the operation of the legal system promotes justice on a basis of equal opportunity. Interpreted infrastructurally, this places a constitutional obligation on the state to consider how legal aid institutions interact with courts, procedures and reform initiatives to shape overall patterns of access. The question is no longer only whether legal aid exists, but whether it is integrated into a broader strategy that genuinely equalises the capacity of citizens to seek and obtain remedies, even in an overburdened system. This perspective also sharpens the normative dilemma at the heart of current reforms. On one hand, refusing to adapt legal aid to conditions of overload risks leaving millions without any meaningful access to justice. On the other hand, relying too heavily on low-cost, high-volume mechanisms may normalise a reduced conception of justice for those who depend most on state support. Legal aid, when treated as democratic infrastructure, must therefore be evaluated not only by metrics of reach and disposal, but by its contribution to sustaining constitutional equality and public confidence in the legal system.

1.7. Conclusion: Article 39A and the Future of Access to Justice

This article has argued that Article 39A must be re-read in light of a justice system operating under conditions of chronic overload. What began as a directive to ensure that poverty and social disadvantage do not bar entry to courts now confronts a more complex reality: tens of millions of pending cases, persistent deficits in judicial strength, and a proliferating network of legal aid and alternative dispute resolution mechanisms tasked with keeping the system minimally functional. In such a setting, legal aid can no longer be conceptualised solely as a targeted welfare measure for the poor; it has become an integral component of how democratic governance manages the scarcity of adjudicatory capacity. Three core claims follow from this re-reading. First, judicial backlog is not just an administrative problem but a constitutional condition that shapes the real content of rights. When delays are systemic, the effectiveness of legal aid depends not only on whether a lawyer is provided but on whether the institutional environment can deliver timely remedies. For poor and marginal litigants, whose claims often concern livelihoods, housing, bodily integrity or liberty, extended pendency can nullify the benefits of representation. Article 39A's insistence that the "operation of the legal system" promote justice on a basis of equal opportunity thus cannot be honoured without taking seriously the temporal dimension of access. Second, contemporary legal aid institutions sit at the intersection of access and governance. NALSA, Lok Adalats, mediation schemes, Tele-Law and related initiatives do widen points of entry into the system and offer alternatives to protracted litigation. They are, in that sense, practical expressions of the constitutional commitment to equalising access. Yet they are simultaneously embedded in a policy discourse that values them for their contribution to reducing arrears and "decongesting" courts. This dual orientation towards empowerment and towards caseload management creates tensions in how legal aid is designed, implemented and evaluated, with a risk that numerical disposal and coverage metrics crowd out more demanding questions about quality, consent and distributive impact. Third, treating legal aid as democratic infrastructure clarifies both its indispensability and its limits. As infrastructure, legal aid is part of the basic equipment a constitutional democracy must maintain if rights are to be more than aspirational. It stabilises the relationship between citizens and law in a context of deep social inequality and institutional strain. At the same time, infrastructure cannot, by itself, compensate indefinitely for structural underinvestment in judicial capacity. When there are too few judges, inadequate court facilities and rising caseloads, even the best-designed legal aid schemes risk becoming mechanisms for rationing access rather than realising equality. The danger is not that alternative forums exist, but that they become the default for those least able to insist on full adjudicatory engagement. These conclusions suggest several implications for constitutional governance in India. Normatively, they call for making Article 39A a more explicit part of conversations about judicial reform, beyond the limited domain of legal aid policy.

Questions about judge strength, court infrastructure, case management and the design of ADR mechanisms are, at bottom, questions about whether the operation of the legal system promotes justice on equal terms. Institutionally, they underscore the need to recalibrate how legal aid programmes are assessed: alongside reach and disposal, indicators of quality of representation, party satisfaction, and the distribution of different dispute-resolution pathways across social groups should figure more prominently. Analytically, they invite a more integrated approach to studying courts, legal aid and governance, one that recognises that access-to-justice initiatives are not peripheral experiments but central to how the state navigates the tension between constitutional commitments and finite institutional capacity.

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Citation: *Surabhi Singha. "Legal Aid in the Age of Judicial Backlogs: Re-evaluating Article 39A as a Contemporary Governance Challenge". International Journal of Political Science (IJPS), vol 11, no 3, 2025, pp. 19-25. doi: https://doi.org/10.20431/ 2454-9452.1103004.*