

## Women and Free Legal Aid in India: A Comparative Study of the Gap Between Statutory Guarantee and Lived Reality

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### Abstract

*Access to justice is the gateway to every other right. For women, the gateway often stays shut. Indian law answers with Section 12(c) of the Legal Services Authorities Act, 1987, which entitles every woman to free legal aid regardless of income. Few entitlements anywhere remove the means test altogether. This article traces that entitlement to its constitutional roots in Article 39-A and to the Supreme Court's fair-trial jurisprudence under Article 21. It then situates India within the international framework: the International Covenant on Civil and Political Rights, the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the Basic Principles on the Role of Lawyers, CEDAW General Recommendation No. 33 and the individual-communication jurisprudence under CEDAW, the due diligence line of Inter-American and European case law, and Article 8 of the Maputo Protocol. A comparative section reads Gideon v. Wainwright and Argersinger v. Hamlin in the United States, Airey v. Ireland and Steel and Morris v. United Kingdom in Europe, and the African regional practice under the Maputo Protocol. The article then turns to implementation. Published data show that women were about 18 to 19 percent of legal aid beneficiaries in recent years, although their eligibility is unconditional and women are roughly half the population. Three structural gaps explain the shortfall: low awareness, uneven quality and continuity of representation, and social and procedural friction, compounded by caste, disability, and migration status. The article closes with low-cost recommendations, several of which fall within the direct reach of student-run legal aid clinics.*

**Keywords:** Access to justice; Free legal aid; Women; Legal Services Authorities Act 1987; Article 39-A; CEDAW; Due diligence; Comparative constitutional law; India

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## 1. Introduction

Access to justice sounds abstract in a textbook. It is not abstract for the person who needs it. A woman leaving an abusive marriage does not ask about doctrine. She asks one question. Can anyone here actually help me, and can I afford to find out?

Indian law answers that question, on paper, with unusual generosity. Section 12(c) of the Legal Services Authorities Act, 1987 entitles every woman to a free lawyer [1]. It does not matter what she earns. This is rare. Most legal aid schemes, in India and abroad, apply an income ceiling. Section 12(c) does not [2].

The promise is now close to four decades old. The statute came into force in 1995, eight years after enactment. Nearly forty years after the Constitution was amended to direct free legal aid, the live question is not whether the right exists. The live question is delivery. How much of the promise reaches the women it was written for?

This article answers that question in four stages. First, it traces the constitutional and statutory foundation of the right in India. Second, it places that foundation within international law, including the treaty body decisions and the due diligence doctrine that most Indian discussions omit. Third, it compares India's approach with judicial developments in the United States, Europe, and Africa. Fourth, it examines where implementation breaks down, using published government and civil society data, and asks what can realistically be done.

The method is doctrinal and comparative. It draws on constitutional text, statute, reported judgments, and the leading international instruments on legal aid and women's access to justice. Its contribution is threefold. It integrates the international framework, including CEDAW's individual-communication jurisprudence and the due diligence standard, into the Indian discussion of Section 12(c). It reads the Indian guarantee against the fullest available set of foreign authorities, not only Gideon and Airedale. And it measures the gap between text and delivery with published quantitative data on legal aid funding, reach, and the gender composition of beneficiaries.

## 2. Methodology

The article uses a doctrinal and comparative method. The doctrinal component reads primary legal sources: the Constitution of India, the Legal Services Authorities Act, 1987, the regulations and schemes made under it, and the reported decisions of the Supreme Court of India, the United States Supreme Court, and the European Court of Human Rights. Treaty texts and treaty body outputs are treated as primary sources for the international component. These include General Recommendations of the CEDAW Committee and the Views adopted under the CEDAW Optional Protocol.

The comparative component selects three jurisdictions that reached the same destination by different routes. The United States reached counsel for indigent criminal defendants through constitutional incorporation. Europe reached legal aid in civil matters through a purposive reading of a general fair-trial guarantee. Africa reached an explicit gender-specific treaty obligation through the Maputo Protocol. The selection is deliberately functional. Each route illuminates a different feature of the Indian design.

The implementation component is secondary-analytic. It relies on published data from the India Justice Report, the Press Information Bureau, answers placed in Parliament, and NALSA

reporting. No field interviews were conducted. This is a limitation, and Section 9 returns to it. It does not, however, weaken the central finding, which is that the published data themselves reveal a large and measurable gender gap in utilisation.

### **3. The International Legal Framework**

#### **3.1 The Universal Declaration and the ICCPR**

The right to a fair hearing has old roots in international law. The Universal Declaration of Human Rights guarantees equality before the law and a fair and public hearing [3]. The International Covenant on Civil and Political Rights builds on this. Article 14 guarantees a fair trial. It requires that an accused be informed of the right to legal assistance, and, where the interests of justice so require, be given legal assistance free of charge if they cannot pay for it [4]. India ratified the ICCPR in 1979. The Covenant's fair-trial obligation sits behind much of the domestic jurisprudence discussed in Section 4.

Two features of Article 14 deserve note. First, the Covenant's guarantee is attached to the interests of justice, not to the party's sex. Second, the Covenant speaks to criminal proceedings. The matters for which Indian women most often seek aid, maintenance, custody, and domestic violence, are civil. The international floor therefore had to be raised by other instruments before it covered the terrain that Section 12(c) governs.

#### **3.2 The UN Principles and Guidelines on Access to Legal Aid, 2012**

In December 2012, the UN General Assembly adopted the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems by consensus [5]. This was the first global instrument devoted entirely to legal aid. It is soft law. It does not bind states in the way a treaty does. But its content is precise. Principle 3 urges states to extend legal aid regardless of means where a case is urgent, complex, or carries a severe penalty. Principles 4 and 5 focus on victims and witnesses, encouraging legal aid for them too, not only for the accused. The Guidelines also stress public legal education, so that people actually know their entitlement exists. This last point matters a great deal for the Indian context, as Section 6 shows.

#### **3.3 The Basic Principles on the Role of Lawyers, 1990**

An earlier and often overlooked instrument completes this layer. The Basic Principles on the Role of Lawyers were adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in Havana in 1990 [6]. They require governments to ensure that all persons have effective access to legal services provided by lawyers of their choice. They further require adequate funding of legal services for the poor and vulnerable. The Basic Principles shift the analytical lens. The 2012 Principles and Guidelines speak to states. The 1990 Principles speak to the organised profession and to the funding decisions that determine whether any entitlement can be staffed. Both lenses are needed in India, where the binding constraint, as Section 6 shows, is often capacity rather than text.

#### **3.4 CEDAW, General Recommendation No. 33, and the Individual Communications Line**

The Convention on the Elimination of All Forms of Discrimination against Women does not mention legal aid by name. India ratified it in 1993, with declarations on Articles 5(a) and 16(1). The Convention's reach was first extended to violence through General Recommendation No. 19

in 1992, which recognised gender-based violence as a form of discrimination [7]. In 2015, the CEDAW Committee adopted General Recommendation No. 33, devoted entirely to women's access to justice [8].

General Recommendation No. 33 describes access to justice as multidimensional. It includes justiciability, availability, accessibility, good quality, and the provision of remedies. It is blunt about why this matters. Effective access to justice, it says, unlocks the transformative potential of law itself. It goes further than most instruments by naming plural justice systems, the customary, religious, or community forums that many women encounter before they ever reach a formal court, and it calls on states to regulate how those systems interact with women's rights. General Recommendation No. 33 is not binding in the way a treaty article is. It is, however, authoritative interpretive guidance, and Indian courts increasingly refer to CEDAW recommendations when interpreting constitutional guarantees of equality.

The Recommendation gains force from the decisions made under the Optional Protocol to CEDAW. In *A.T. v. Hungary*, decided in 2005, the Committee found that a state whose law offered no effective protection order, and whose courts treated a battered woman's claims as a property matter, had violated its obligations to legislate against and remedy domestic violence [9]. In *Fatma Yildirim v. Austria*, decided in 2007, the Committee found a violation where a protection order had been issued against a violent husband but not enforced, and the applicant was killed shortly afterwards; the state had failed to exercise due diligence to protect her life [10]. These decisions matter for India in two ways. They establish that failures of access to justice, the absence of effective remedies and the non-enforcement of protective orders, are themselves actionable discrimination. And they show that a state cannot defend itself by pointing to a formal entitlement on paper. India has not ratified the CEDAW Optional Protocol. The line of reasoning, however, travels through the ratification of CEDAW itself and through the Committee's interpretive authority.

### **3.5 The Due Diligence Standard**

The thread that ties the gender cases together is due diligence. The Inter-American Court of Human Rights stated it first and most famously in *Velasquez Rodriguez v. Honduras* in 1988. A state must prevent, investigate, and punish violations of rights, and, where possible, repair the harm, even where the violator is a private actor [11]. The European Court of Human Rights applied this logic to gender-based violence in *Opuz v. Turkey* in 2009. It held that the systematic failure of the Turkish authorities to protect a woman and her mother from a known violent abuser, despite repeated complaints, amounted to violations of the rights to life and to non-discrimination, because the judicial passivity created a climate conducive to domestic violence [12]. The Council of Europe's Istanbul Convention of 2011 then converted due diligence into treaty text, and expressly requires parties to facilitate access to legal aid for victims of violence [13].

The relevance to Section 12(c) is direct. Free legal aid is one of the concrete instruments through which a state exercises due diligence toward women facing violence. A guarantee that exists on paper but fails in delivery is not neutral. Under the due diligence lens, it is evidence of state failure, not merely of administrative shortfall. This framing matters for how the implementation gaps in Section 6 should be read.

### **3.6 The Maputo Protocol, Beijing, and the SDGs**

Africa offers the most explicit regional example. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the Maputo Protocol, was adopted in 2003 [14]. Article 8 is titled Access to Justice and Equal Protection before the Law. It requires states to ensure effective access by women to judicial and legal services, including legal aid. It also requires gender-sensitive training for law enforcement and equal representation of women within the judiciary. India is not a party to this African regional instrument. But it is a useful comparator, because it shows that legal aid for women has, in at least one regional human rights system, been elevated from a general entitlement into an explicit, named treaty obligation.

Two further global instruments bracket the framework. The 1995 Beijing Declaration and Platform for Action named women's unequal access to legal aid as a barrier to substantive equality and called on governments to remedy it [15]. More recently, Sustainable Development Goal 16.3 commits states to promote the rule of law and ensure equal access to justice for all by 2030, and an indicator measuring the share of the population that received legal aid when needed now sits inside the UN's monitoring framework [16]. This places what might look like a narrow domestic provision, Section 12(c) of a 1987 Indian statute, inside a live, ongoing global measurement project.

## **4. The Indian Constitutional and Statutory Framework**

### **4.1 Article 39-A, Article 21, and Article 15(3)**

Article 39-A was inserted into the Constitution by the Forty-second Amendment in 1976 [17]. It directs the state to promote justice on a basis of equal opportunity, and specifically to provide free legal aid, so that no citizen is denied justice due to economic or other disability [18]. As a Directive Principle, Article 39-A is not, by itself, enforceable in court. The Supreme Court, however, has consistently read it together with Article 21, the right to life and personal liberty, to produce an enforceable result.

Article 15(3) supplies the women-specific hook. It permits the state to make special provisions in favour of women, notwithstanding the general non-discrimination guarantee in Article 15(1). This is the doctrinal basis that lets Parliament give women free legal aid without an income ceiling, while applying one to most other categories of applicant under Section 12 of the 1987 Act. The entitlement for women in Section 12(c) is thus the statutory descendant of two distinct constitutional provisions: Article 39-A for the general guarantee, and Article 15(3) for the categorical preference.

### **4.2 Judicial Construction: From Hoskot to Anita Kushwaha**

The doctrinal turn began in 1978, in *M.H. Hoskot v. State of Maharashtra*. Justice Krishna Iyer held that where a prisoner cannot exercise a right of appeal for want of legal assistance, the court can assign counsel, and that providing free legal aid is a constitutional duty of the state, not an act of charity [19].

A year later, in *Hussainara Khatoon v. State of Bihar*, the court went further. The case began with press reports of undertrial prisoners in Bihar, some held for years without trial. Justice Bhagwati held that a criminal procedure that leaves a poor accused without a lawyer cannot be called

reasonable, fair, and just, and therefore cannot satisfy Article 21 [20]. From this point, free legal aid was treated as an ingredient of the right to life and liberty, not merely an aspiration under Article 39-A.

The Bhagalpur blinding case, *Khatri v. State of Bihar*, extended the duty [21]. The court held that the right to free legal aid is essential to Article 21, and criticised the state of Bihar for failing to implement the Hussainara ruling. It also held that a magistrate has a positive duty to inform an accused of the right to free legal aid, rather than waiting for the accused to ask. *Sheela Barse v. State of Maharashtra* reaffirmed the point, holding that legal assistance to an indigent accused is a constitutional imperative under Articles 14, 21, and 39 [22]. *Suk Das v. Union Territory of Arunachal Pradesh*, decided in 1986, supplied the crucial consequence. An accused who was not informed of his right to free legal aid, and who was consequently unrepresented at trial, had his conviction set aside, because the trial was vitiated by this constitutional infirmity [23]. Together, these cases turn legal aid from an entitlement a poor litigant must know to ask for into an obligation a magistrate must proactively discharge.

In 1995, *State of Maharashtra v. Manubhai Pragaji Vashi* extended the reasoning to legal education itself. The court held that a state refusing to adequately fund law colleges undermines the very supply of lawyers on which the legal aid guarantee depends [24]. This case places legal education, and by extension student-run legal aid clinics, inside the same constitutional logic that protects Section 12(c).

The line culminated in 2016. A Constitution Bench in *Anita Kushwaha v. Pushpanjali Rameshwar* held that access to justice is a fundamental right under Articles 14 and 21, and identified its four essential components: the state must provide an effective adjudicatory mechanism; the mechanism must be reasonably accessible in terms of distance; adjudication must be speedy; and access must be affordable [25]. Legal aid is the instrument by which the fourth component is secured for those who cannot pay. The four-part test is analytically important. It converts access to justice from a slogan into a checklist against which delivery can be measured, and Section 6 measures the implementation gaps against it.

None of the criminal-law cases above deal with women as a distinct category; they deal with poverty generally. The specific, unconditional entitlement for women rests on Article 15(3), as explained above. One case does speak to women as victims. *Delhi Domestic Working Women's Forum v. Union of India*, decided in 1995, addressed legal aid for victims, not only accused persons [26]. Six domestic workers were raped by army personnel on a train. The Supreme Court laid down guidelines for the treatment of rape victims within the criminal justice system, and held that a complainant in a sexual assault case should be provided with legal representation, someone familiar with the criminal justice system who can guide her through it. Courts have since held that this entitles a survivor to legal aid from the moment a first information report is lodged, through the District Legal Services Authority [27].

#### **4.3 The Legal Services Authorities Act, 1987**

The Act turns Article 39-A into an institution. The National Legal Services Authority sits at the apex. Below it are the State Legal Services Authorities, the District Legal Services Authorities, and the Taluk Legal Services Committees. As of 2024, the structure comprised 37 State Legal

Services Authorities, 38 High Court Legal Services Committees, 703 District Legal Services Authorities, and 2,390 Taluk Legal Services Committees [28].

Section 12 lists who qualifies for free legal aid. Clause (c) places women in the same unconditional category as children and persons in custody [29]. There is no income ceiling, unlike the general public, who must fall under the ceiling fixed for other categories. The evidentiary bar is deliberately low. Section 13(2) permits a simple affidavit as to eligibility, not documentary proof that a woman in distress may not have to hand. The right does not end once a trial begins. A woman who engaged a private lawyer can apply for free legal aid at the appellate stage. Regulation 7(6) of the NALSA (Free and Competent Legal Services) Regulations, 2010 allows an applicant to request a specific panel lawyer of her choosing [30]. This regulation is important in principle. It is, as Section 6 shows, under-used in practice. The same Regulations establish Monitoring and Mentoring Committees at every tier, from the Supreme Court Legal Services Committee down to the Taluk Legal Services Committees, to supervise the quality of court-based legal services and to guide panel lawyers [31].

#### **4.4 Targeted Schemes and State-Level Innovation**

NALSA has layered targeted responses onto this base. The Compensation Scheme for Women Victims/Survivors of Sexual Assault and Other Crimes, 2018 provides interim and final compensation through the State Legal Services Authorities, independent of the outcome of the criminal trial [32]. This operationalises the principle first stated in Delhi Domestic Working Women's Forum. Legal services institutions are also expected to coordinate with Protection Officers under the Protection of Women from Domestic Violence Act, 2005, and with One Stop Centres, so that a survivor can access legal, medical, and psychological support without repeating her account at multiple separate offices [33].

Some states have gone beyond the national floor. Haryana has run a scheme since 2009 under which empanelled women advocates attend police stations and courts during remand hours, specifically to represent women and child victims of crime [34]. This shows that a state legal services authority can build a faster, more specific response on top of the national framework, without waiting for a fresh central scheme.

The Act also expects law colleges and universities to run their own legal aid clinics [35]. This is not a peripheral detail. It is the point at which a statute, several Supreme Court judgments, and the student legal community intersect directly. Section 8 returns to it.

### **5. Comparative Judicial Approaches Outside India**

#### **5.1 The United States: Powell, Gideon, and Argersinger**

The American line begins before Gideon. In *Powell v. Alabama* in 1932, nine young Black defendants, described by the court as ignorant and illiterate, were tried for rape in Alabama and sentenced to death after a trial that lasted a single day, with counsel appointed too late to prepare any defence. The Supreme Court held that the appointment of counsel in a capital case, with adequate time to prepare, was a fundamental requirement of due process [36]. The case is worth recalling in this article because its facts combined poverty, race, and the total failure of the representation machinery, the same combination that Section 6.4 identifies among India's most disadvantaged women applicants.

Betts v. Brady in 1942 then narrowed the right to a case-by-case special circumstances test [37]. In 1963, Gideon v. Wainwright overruled Betts. Clarence Gideon had been charged with a felony in Florida. He could not afford a lawyer. The trial judge refused to appoint one. Gideon was convicted, and from prison he handwrote a petition to the Supreme Court. The Court ruled unanimously in his favour. It held that the Sixth Amendment right to counsel applies to the states through the Fourteenth Amendment, and that a state must provide a lawyer to an indigent defendant facing serious criminal charges. The Court called legal assistance fundamental and essential to a fair trial [38]. In 1972, Argersinger v. Hamlin extended the rule: no person may be imprisoned for any offence, however petty, unless they were represented by counsel or validly waived counsel [39].

Gideon is a criminal-law case. It does not speak to women specifically. It shares, however, the same structural insight found in the Indian line from Hoskot onward: a right without a lawyer is often not a right at all, only a theoretical entitlement. The contrast is equally instructive. The American guarantee remains confined to criminal defence and, in civil matters, depends on state-by-state funding schemes and the discretion of courts. India's Section 12(c), by contrast, reaches civil and family matters, where women's legal need concentrates.

## 5.2 Europe: Airey and Steel and Morris

Gideon dealt with criminal law. Airey v. Ireland, decided by the European Court of Human Rights in 1979, dealt with something closer to the Section 12(c) context: a woman seeking a civil remedy. Johanna Airey wanted a judicial separation from her husband. Divorce was then illegal in Ireland. Civil legal aid did not exist for this kind of case. She could not afford a private lawyer, and the proceedings were too complex to navigate alone. The Court held that Ireland had breached Article 6(1) of the European Convention on Human Rights, the right to a fair hearing. It reasoned that the right of access to a court can, in some circumstances, require the state to provide legal assistance, even in civil matters, where the case is legally or emotionally too complex for a litigant to handle unrepresented [40]. Ireland subsequently established a civil legal aid scheme. Airey remains one of the most cited authorities anywhere for the proposition that legal aid in civil, family-related matters is not a discretionary favour, but can be a component of the right to a fair hearing itself. This is directly relevant to India, where the majority of women who seek legal aid under Section 12(c) do so in exactly this kind of matter: maintenance, custody, domestic violence, and matrimonial disputes.

Airey is not the end of the European line. In Steel and Morris v. United Kingdom, decided in 2005, two unemployed campaigners faced a corporate libel action by McDonald's and were denied legal aid throughout proceedings that lasted over three hundred court days. The European Court held that the denial of legal aid, given the complexity of the case and the stark inequality of arms between the corporation and the unrepresented defendants, breached Article 6(1) [41]. The case shows that the Airey principle is not confined to family law. Wherever the inequality of arms makes an effective hearing impossible, the fair-trial guarantee can generate an obligation to fund representation.

## 5.3 Africa: Article 8 of the Maputo Protocol in Practice

Unlike Gideon and Airey, which are judicial decisions, Article 8 of the Maputo Protocol operates through state reporting and regional litigation before the African Commission on Human and

Peoples' Rights. It has supported national-level reform across ratifying states, particularly on gender-based violence, by giving domestic courts and civil society a binding regional text to invoke [42]. The comparative lesson for India is structural rather than doctrinal. Where a regional or international instrument names legal aid for women explicitly, it becomes a tool that domestic advocates and courts can invoke directly, rather than a general principle that has to be reconstructed from broader equality guarantees each time.

#### **5.4 What the Comparison Shows**

Three jurisdictions, three different routes to a similar destination. The United States reached its result through the Sixth Amendment and the specific facts of one indigent defendant. Europe reached its result through a purposive reading of a general fair-trial guarantee, extended first to a woman's civil matter and later to any case defined by an inequality of arms. Africa reached its result through an explicit, gender-specific treaty provision. India took a fourth route: direct, unconditional statutory entitlement, reinforced by constitutional interpretation. Of the four, India's Section 12(c) is, on its face, the most generous.

Second, delivery infrastructure, not legal text, decided the outcome in Airey and continues to decide outcomes in India. Ireland did not lack a right; it lacked a functioning legal aid scheme for civil matters. India does not lack a right either. What it lacks, in many districts, is the awareness infrastructure and caseload capacity to make Section 12(c) function the way Hussainara Khatoon and Khatri imagined it would.

Third, naming the obligation explicitly, as the Maputo Protocol does for African states, and as CEDAW General Recommendation No. 33 does globally, gives advocates and courts a direct hook. Fourth, the due diligence line from Velasquez Rodriguez through Opuz adds a normative edge that the older comparative cases lack. Under that line, persistent failure to deliver a guaranteed service to women facing violence is not mere inefficiency. It is discrimination. Indian scholarship has not yet seriously engaged this standard, and Section 7 argues that it should.

#### **6. Where Implementation Breaks Down**

A statute is only as good as its delivery. The published data allow the gap to be sketched with unusual precision. Around 80 percent of India's population is eligible for free legal aid under Section 12, including women, children, persons in custody, persons with disabilities, and members of the Scheduled Castes and Scheduled Tribes [43]. Against that eligible base, the measured reach is thin. The India Justice Report calculated per capita spending on free legal aid at Rs. 0.73 based on NALSA expenditure alone in 2020-21, or Rs. 4.57 when state contributions are included [43]. An earlier edition reported a per capita spend of Rs. 0.75, one legal services clinic for every 42 villages, and several union territories without a single legal services clinic [44]. For the three years from 2022-23 to 2024-25, the authorities report that 44.22 lakh persons benefited from free legal aid and advice [45]. That figure, against an eligible population of over one billion, confirms that the delivery funnel narrows sharply.

The gender breakdown is the sharpest datum in this article. In answers placed before Parliament, the number of women who received legal services was 2,83,738 in 2023-24 and 3,16,151 in 2024-25, which was 18.30 percent and 19.07 percent respectively of all beneficiaries in those years [46]. Women are roughly half the population, and they alone are eligible unconditionally. Yet they

formed fewer than one in five of those actually served. The rest of this section identifies four mechanisms that plausibly explain this gap, none of which is captured by the statutory text.

### **6.1 Awareness**

A right nobody knows about does little work. Empirical work on legal problems in India reports that a large majority of those who experienced a legal problem never sought advice or information at all [47]. NALSA has responded with sustained outreach, including the pan-India legal awareness and outreach campaign of 2021-22, which covered every district through door-to-door awareness drives [48]. The reach of such campaigns still thins quickly outside district towns. A woman an hour's travel from the nearest District Legal Services Authority office is far less likely to know that Section 12(c) exists than a law student reading this article. This asymmetry decides, more than the statute's own wording, who actually applies. It maps directly onto the third ingredient of Anita Kushwaha: a mechanism is not reasonably accessible if the population does not know it exists.

### **6.2 Quality and Continuity of Representation**

The panel-lawyer system functions, but empanelled advocates often carry heavy caseloads. This shows most in matters that need sustained engagement: domestic violence, matrimonial disputes, and custody battles, rather than a single court appearance. The right to request a specific lawyer under Regulation 7(6) exists on paper. Few applicants know to invoke it, which weakens the protection it was designed to offer [30]. Monitoring and Mentoring Committees exist at every tier, but their proceedings and findings are not published in a form that allows independent assessment of panel-lawyer performance in cases involving women [31]. Quality assurance is therefore formally complete and substantively opaque. The India Justice Report tracks the share of women among panel lawyers and para-legal volunteers as a distinct indicator, which is a beginning, but no published metric yet measures whether an applicant's choice of counsel was actually honoured, or how a matter fared after the first hearing [43].

### **6.3 Social and Procedural Friction**

Even where legal aid is technically available, a woman deciding whether to use it is rarely weighing legal merits alone. Family pressure to withdraw is common. So is the fear of being talked about in a small community. There are also plain logistics: bus fare, childcare, and a day's lost wages to reach a District Legal Services Authority office. The 2018 Compensation Scheme illustrates the problem well. It is only as useful as a survivor's capacity to navigate an application process, often while still dealing with the immediate aftermath of trauma [32]. Recent scholarship on Lok Adalats, the settlement forums institutionalised by the same Act, documents subtle coercion, biased conciliator attitudes, and settlements that reinforce existing inequalities, with the burden falling disproportionately on women and on Dalit and Other Backward Class women in particular [49]. Friction, in other words, is not only procedural. It is embedded in the forums through which aid is delivered.

### **6.4 Intersectional Disadvantage**

These three problems are not evenly distributed. A Dalit woman in rural India, a woman with a disability, or a migrant labourer's wife who barely speaks the local dialect, carries several disadvantages that compound one another. Caste-based social distance can make an applicant hesitant to approach a legal aid office staffed largely by officials from dominant communities,

quite apart from any question of formal eligibility. Section 12(c) removes the income barrier. It does nothing, by itself, about the social distance between an applicant and the system meant to serve her. Any account of the gap between entitlement and access has to hold this in view. Otherwise, the average woman implicitly imagined in policy discussions quietly becomes the woman for whom the system already works best, which is precisely backwards.

## 6.5 Funding and Capacity

The final mechanism is money and staffing. Grants-in-aid to NALSA were Rs. 145 crore in 2021-22, Rs. 190 crore in 2022-23, and Rs. 400 crore in 2023-24, with Rs. 200 crore allocated for 2024-25 [28]. Most states contribute more than 60 percent of their legal aid budgets, and utilisation of allocated funds varies widely, with some jurisdictions utilising less than half of what was allocated [43]. The government has simultaneously run the DISHA scheme, with an outlay of Rs. 250 crore over 2021-26, to support Tele-Law, pro bono legal services, and legal literacy [50]. The Legal Aid Defense Counsel System, which provides dedicated criminal defence lawyers, had functional offices in 668 districts as of September 2025 [45]. The pattern is revealing. Criminal defence now has a dedicated, named, funded delivery system. Civil and family matters, the terrain on which women's legal need concentrates, do not. The unconditional entitlement of Section 12(c) is thus delivered through the same stretched panel system that carries everyone else's civil matters, while the one category that received purpose-built infrastructure was the one the Constitution does not single out by gender. This is not an argument against the Legal Aid Defense Counsel System. It is an argument for matching infrastructure to need.

## 7. Discussion: What the Comparative Lens Adds

Placing the Indian position beside Gideon, Airey, Opuz, and the Maputo Protocol sharpens three points.

First, India's statutory entitlement is broader on paper than any of the comparators. Gideon and Argersinger are limited to criminal charges where liberty is at stake. Airey required a case-by-case argument about complexity. Steel and Morris requires proof of an inequality of arms. Article 8 of the Maputo Protocol is a general obligation, not a specific rule with a defined eligibility class. Section 12(c), by contrast, applies to every woman, in every matter, without an income test or a complexity threshold.

Second, the gap is a delivery gap, and it is measurable. The beneficiary data show women at under 20 percent of legal aid recipients despite unconditional eligibility [46]. Read against the four ingredients of Anita Kushwaha, the gap concentrates in accessibility and affordability: the distance, information, and social cost of reaching the system, not the formal price of a lawyer. Read against General Recommendation No. 33, the gap is one of accessibility and quality, the two dimensions India is least able to evidence.

Third, the due diligence standard reframes what the gap means. Under the line running from Velasquez Rodriguez through A.T. v. Hungary, Fatma Yildirim, and Opuz, a state's systematic failure to make its protective machinery work for women is treated as discrimination, not as mismanagement [9, 10, 11, 12]. India has not ratified the CEDAW Optional Protocol, so the Committee's procedures do not run against it. The standard, however, has two domestic entry points. Indian courts already read CEDAW recommendations into Articles 14, 15, and 21. And the Supreme Court's own test in Anita Kushwaha supplies the components against which a systemic

failure could be litigated. What is missing is not the law. It is the district-level monitoring architecture that would let a women's group or a legal aid clinic measure, publicly, how well the entitlement is working in a given district.

## 8. Recommendations

None of this argues for statutory redesign. Section 12(c) is, if anything, ahead of where implementation currently sits. The recommendations below aim to close the distance between text and delivery. Several require no new legislation at all.

First, strengthen law-school legal aid clinics as intermediaries, not only as occasional providers of pro bono service. A student who spends an afternoon a month at a legal literacy camp, or who helps an applicant complete a Section 12(c) affidavit in plain language, does something the statute cannot do by itself. Clinical legal education scholarship has long argued this role; the funding decisions of Manubhai Pragaji Vashi and the clinic mandate of the Act give it a constitutional and statutory anchor [24, 35].

Second, expand the para-legal volunteer cadre that the Act already contemplates but which remains under-used in many districts. Trained volunteers could accompany first-time applicants to their initial visit to a legal services institution, since hesitation most often turns into withdrawal at that first point of contact.

Third, strengthen the One Stop Centre model so that it functions as a genuine single point of entry, combining legal, medical, and psychological support, reducing the number of separate offices a woman must explain her situation to.

Fourth, introduce periodic, independent review of panel-lawyer performance in cases involving women, going beyond raw disposal statistics to assess whether an applicant's choice of counsel under Regulation 7(6) was actually honoured, and publish the findings. This operationalises the good quality dimension of General Recommendation No. 33.

Fifth, collect and publish district-level data on Section 12(c) utilisation, disaggregated by caste, disability status, and rural or urban location, so that the intersectional gaps identified in Section 6.4 can be measured rather than assumed. This also aligns India with the SDG 16.3 indicator on access to legal aid, converting a domestic statistic into a comparable international one [16].

Sixth, build civil and family legal aid infrastructure commensurate with need. The Legal Aid Defense Counsel System shows that a named, funded, dedicated delivery channel is administratively possible [45]. A parallel structure for family and civil matters, where women's demand concentrates, would answer the asymmetry documented in Section 6.5.

## 9. Limitations

This article is doctrinal and secondary-analytic. It relies on published judgments, statutes, treaty texts, and published data, and conducts no field research of its own. The utilisation figures cited are government-reported and may understate or overstate actual delivery in particular districts. The claim that the gender gap in beneficiaries reflects the four mechanisms of Section 6 is an inference from convergent evidence, not a demonstrated causal account. Empirical work, ideally district-level and disaggregated, is the natural next step, and Section 8's fifth recommendation is designed to make such work possible.

## 10. Conclusion

Section 12(c) reflects a deliberate constitutional choice. A woman's access to justice should never depend on her income. Nearly four decades after the Act came into force, the live question is no longer whether the right exists. Indian courts have defended it consistently, from Hoskot through Anita Kushwaha, and international law, from the ICCPR through CEDAW General Recommendation No. 33 and the due diligence jurisprudence, backs the same principle. The live question is delivery. The data assembled here make the gap visible: women, who alone hold an unconditional entitlement, were fewer than one in five of those served in recent years. For law students entering the profession, that is not a discouraging note to end on. It is an invitation. Legal aid clinics, para-legal volunteering, and careful, unglamorous scholarship on how these schemes function on the ground remain among the most direct ways to move Article 39-A from constitutional text into a woman's actual life.

## Declarations

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## References

1. The Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987 (India), s. 12(c).
2. National Legal Services Authority (n.d.). Legal aid: Frequently asked questions. <https://nalsa.gov.in/legal-aid/>
3. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (1948), arts. 7, 10.
4. International Covenant on Civil and Political Rights, 1966, 999 UNTS 171, art. 14(3)(d).
5. United Nations General Assembly. (2012). United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, A/RES/67/187 (20 December 2012).
6. United Nations. (1990). Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990.
7. CEDAW Committee. (1992). General Recommendation No. 19 on violence against women (CEDAW/C/1992/L.1/Add.15).
8. CEDAW Committee. (2015). General Recommendation No. 33 on women's access to justice (CEDAW/C/GC/33, 3 August 2015).
9. A.T. v. Hungary, Communication No. 2/2003, Views of the CEDAW Committee, 26 January 2005.
10. Fatma Yildirim v. Austria, Communication No. 6/2005, Views of the CEDAW Committee, 6 August 2007.
11. Velasquez Rodriguez v. Honduras, Inter-American Court of Human Rights, Judgment of 29 July 1988 (Merits).

12. Opuz v. Turkey, App. No. 33401/02, European Court of Human Rights, Judgment of 9 June 2009.
13. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 2011, CETS No. 210.
14. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted 11 July 2003, Maputo.
15. United Nations. (1995). Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, 15 September 1995.
16. United Nations. (2015). Transforming our world: The 2030 Agenda for Sustainable Development, A/RES/70/1; UN ODSS, SDG indicator 16.3.3 on access to legal aid.
17. The Constitution (Forty-second Amendment) Act, 1976 (India).
18. The Constitution of India, 1950, arts. 14, 15(3), 21, 39-A.
19. Madhav Hayawadanrao Hoskot v. State of Maharashtra, (1978) 3 SCC 544; 1978 AIR 1548 (India).
20. Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, 1979 AIR 1369; (1980) 1 SCC 98 (India).
21. Khatri & Ors. v. State of Bihar & Ors., 1981 SCR (2) 408; (1981) 1 SCC 627 (India).
22. Sheela Barse v. State of Maharashtra, AIR 1983 SC 378 (India).
23. Suk Das & Anr. v. Union Territory of Arunachal Pradesh, [1986] 2 SCR 590; AIR 1986 SC 991 (India).
24. State of Maharashtra v. Manubhai Pragaji Vashi & Ors., 1996 AIR 1; (1995) 5 SCC 730 (India).
25. Anita Kushwaha v. Pushpanjali Rameshwar, (2016) 8 SCC 509 (India).
26. Delhi Domestic Working Women's Forum v. Union of India & Ors., (1995) 1 SCC 14 (India).
27. Ensure that all police stations have lawyer panels to aid sexual assault victims. Legal Services India. <https://www.legalservicesindia.com/law/print/2431>
28. Press Information Bureau, Government of India. (2024). State/UT-wise details of number of persons benefited through free legal services, 26 July 2024.
29. The Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987 (India), ss. 12, 13(2).
30. National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 (India), reg. 7(6).
31. Rajya Sabha, Unstarred Question No. 600, Ministry of Law and Justice, Department of Justice, answered 2025. [https://www.sansad.in/getFile/annex/268/AU600\\_F13MD2.pdf](https://www.sansad.in/getFile/annex/268/AU600_F13MD2.pdf)
32. National Legal Services Authority. (2018). Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018.
33. The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).
34. Haryana State Legal Services Authority. (n.d.). Legal aid. <https://haryana.nalsa.gov.in/legal-aid/>
35. National Legal Services Authority. (n.d.). About NALSA; Legal services clinics. <https://nalsa.gov.in/about-nalsa/>

36. Powell v. Alabama, 287 U.S. 45 (1932) (United States Supreme Court).
37. Betts v. Brady, 316 U.S. 455 (1942) (United States Supreme Court).
38. Gideon v. Wainwright, 372 U.S. 335 (1963) (United States Supreme Court).
39. Argersinger v. Hamlin, 407 U.S. 25 (1972) (United States Supreme Court).
40. Airey v. Ireland, App. No. 6289/73, (1979) 2 EHRR 305 (European Court of Human Rights).
41. Steel and Morris v. United Kingdom, App. No. 68416/01, European Court of Human Rights, Judgment of 15 February 2005.
42. Equality Now. (2025). How the Maputo Protocol has supported justice for survivors of sexual violence in Africa. <https://equalitynow.org/news/news-and-insights/how-the-maputo-protocol-has-supported-justice-for-survivors-of-sexual-violence-in-africa/>
43. India Justice Report. (2023). India Justice Report 2022: Legal aid backgrounder. [https://indiajusticereport.org/files/IJR\\_2022\\_Legal\\_Aid\\_Backgrounder.pdf](https://indiajusticereport.org/files/IJR_2022_Legal_Aid_Backgrounder.pdf)
44. Kadam, S. (2019). India Justice Report 2019 highlights country's failing criminal justice system. Citizens for Justice and Peace. <https://cjp.org.in/one-policeman-for-every-663-indians-75-paise-per-capita-spend-on-legal-aid>
45. Press Information Bureau, Government of India. (2025). National Legal Services Day: India's legal aid system reached 44.22 lakh people (2022-25), 9 November 2025.
46. Rajya Sabha, Unstarred Question No. 600, Ministry of Law and Justice, Department of Justice: beneficiary data by category, 2023-24 and 2024-25. [https://www.sansad.in/getFile/annex/268/AU600\\_F13MD2.pdf](https://www.sansad.in/getFile/annex/268/AU600_F13MD2.pdf)
47. Tomar, L., & Jain, K. (2026). When justice has a price: Economic inequality and access to justice. <https://doi.org/10.5281/zenodo.18980732>
48. National Legal Services Authority. (2022). Annual Report 2021-2022.
49. Kaushik, A., & Chhabra, L. (2026). Gender and caste dynamics in Lok Adalats: A critical analysis of inclusivity challenges. Minnesota Journal of Business Law and Entrepreneurship. <https://doi.org/10.52783/mjble.143>
50. Press Information Bureau, Government of India. (2025). Free legal services provided to 39.44 lakh persons (2022-23 to 2024-25), 3 April 2025.