

## Access to Justice or Illusory Right? A Comparative Analysis of Legal Aid for the Protection of Women's Rights

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### *Abstract*

*The operationalization of women's rights, transforming them from abstract legal pronouncements into tangible realities, is fundamentally mediated by access to justice. State-provided legal aid services represent the primary mechanism for bridging the gap between formal equality and socio-economic disparity; yet, their efficacy remains a site of critical contestation. This paper examines whether these systems serve as genuine conduits for justice or, as this analysis suggests, merely an illusory right for the women they are designed to support. Employing a comparative analytical framework, this research examines the de jure promises and de facto realities of legal aid in India, the United Kingdom, and South Africa. Grounded in the substantive equality standards articulated by the Convention on the Elimination of All Forms of Discrimination against Women particularly its General Recommendation No. 33 the study evaluates the structural integrity of each national model. The analysis reveals a 'paradox of progressive universalism' in India, where an expansive legal right for all women is systematically nullified by profound implementation deficits. By contrast, the United Kingdom's model presents a 'legislated illusion,' where fiscal austerity has deliberately curtailed access, weaponizing procedural hurdles like the 'domestic violence gateway' to exclude even its most explicitly protected beneficiaries. South Africa, in turn, illustrates a 'prioritisation paradox,' with its constitutional mandate for legal aid overwhelmingly resourced for criminal defense, thereby systemically marginalizing the civil justice needs most critical to women's empowerment. Ultimately, this paper argues that despite their divergent political rationales, these systems converge in their failure to provide accessible, high-quality, and responsive services. By foregrounding the persistent gap between legal promise and lived experience, this research contributes a critical, cross-jurisdictional perspective on the structural impediments to women's access to justice, challenging the assumption that the mere existence of legal aid frameworks equates to their functional reality.*

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## I. Introduction

Access to justice is more than a lofty ideal; it is a foundational principle of any democratic society that operates under the rule of law. It is not merely the procedural right to enter a courtroom but a multi-dimensional concept, one that can be defined as the ability of all people to understand their rights, navigate the legal system, and seek and obtain effective remedies.<sup>2</sup> This must happen, of course, through institutions of justice that are themselves accessible, affordable, impartial, and effective. It is this principle that ensures laws apply equally to everyone and that disputes can be settled peacefully, thereby upholding human dignity and fostering social cohesion.<sup>3</sup> For women, however, access to justice constitutes the critical link between rights on paper and rights in practice. It represents the primary mechanism through which fundamental human rights bodily integrity, economic security, and family life are vindicated.<sup>4</sup> For a woman facing domestic violence, it signifies the ability to obtain a protective order that keeps an abuser at a safe distance. For a mother in a marital dispute, it means securing child support and an equitable divorce.<sup>5</sup> For a tenant facing a wrongful eviction, it means knowing her rights and having the capacity to defend her home. Without effective access to justice, the extensive legal protections guaranteed to women in national constitutions and international treaties remain purely theoretical.<sup>6</sup> They are transformed from enforceable entitlements into hollow promises.

Ensuring women's access to justice is, therefore, an absolute prerequisite for achieving substantive gender equality and empowering women as full and equal participants in society. For a vast portion of the global population, the most significant barrier to accessing justice is economic. The costs associated with

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<sup>2</sup> Deborah I. Rhode, access to justice (2004).

<sup>3</sup> Hazel genn, paths to justice: what people do and think about going to law (1999).

<sup>4</sup> Marc galanter, *why the "haves" come out ahead: speculations on the limits of legal change*, 9 law & soc'y rev. 95 (1974).

<sup>5</sup> Mauro cappelletti & bryant garth, access to justice: a world survey (1978).

<sup>6</sup> Frances h. Foster, access to justice: legal aid for the poor (2015).

legal proceedings, from court fees to hiring an attorney, are often prohibitive for those with limited means.<sup>7</sup> In response, states have established legal aid systems, which provide free or low-cost legal assistance to those who cannot afford it, primarily in civil and criminal matters. Indeed, legal aid stands as the primary state-sponsored mechanism designed to bridge the gap between the formal promise of equality before the law and the practical reality of economic disparity. Accordingly, this paper poses a central research question: Do these state-provided legal aid systems translate the formal promise of women's rights into tangible realities, or do systemic flaws render this promise illusory? Our inquiry moves beyond a descriptive account of legal aid frameworks to a critical evaluation of their real-world impact on women. It interrogates the persistent gap between *de jure* rights the laws and policies that guarantee legal aid and the *de facto* realities experienced by women who attempt to navigate these systems. By comparatively analysing the national models of India, the United Kingdom, and South Africa, this paper argues that structural failures, whether by design or neglect, consistently undermine the efficacy of legal aid, rendering it an illusory right for many of the women it is intended to protect.

## **II. The Normative Framework: International Law and Women's Access to Justice**

The obligation of states to ensure women's access to justice is firmly rooted in international human rights law. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), often described as the “international bill of rights for women,” provides the foundational legal framework for this obligation.<sup>8</sup> Its provisions, as authoritatively interpreted by the CEDAW Committee, establish a clear and comprehensive set of duties for states to create and maintain justice systems that are not only formally available but substantively accessible to all women.<sup>9</sup> Adopted in 1979, CEDAW defines

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<sup>7</sup> Deborah I. Rhode, *access to justice: connecting principles to practice*, 17 *geo. J. Legal ethics* 369 (2004).

<sup>8</sup> Convention on the elimination of all forms of discrimination against women, dec. 18, 1979, 1249 *u.n.t.s.* 13.

<sup>9</sup> Andrew byrnes et al., *the impact of the cedaw convention: paths to equality* (2013).

discrimination against women and sets a comprehensive agenda for national action to end it. Several of its articles are central to the right of access to justice.<sup>10</sup> Article 2, for instance, establishes the core obligation of States Parties to “condemn discrimination against women in all its forms” and to pursue a policy of eliminating it without delay. Crucially, Article 2(c) requires states to “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”.<sup>11</sup> This provision mandates not just the existence of laws but the presence of effective institutional mechanisms for their enforcement a critical distinction.

Further, Article 15 guarantees women “equality with men before the law,” mandating that they be treated “equally in all stages of procedure in courts and tribunals”.<sup>12</sup> This principle directly implicates the provision of legal aid, as unequal access to legal representation is a primary source of procedural inequality. Critically, the CEDAW Committee has interpreted the Convention as mandating a standard of **substantive equality**, not merely formal equality. A purely formal or gender-neutral approach is insufficient. Substantive equality is concerned with the effects of laws and policies and requires states to take measures to correct prevailing inequalities and create an “enabling environment to achieve equality of results”. This principle demands that states look beyond the letter of the law to address the practical barriers economic, social, and cultural that prevent women from realising their rights.<sup>13</sup>

The most detailed and authoritative interpretation of states' obligations is found in the CEDAW Committee's **General Recommendation No. 33**, adopted in 2015. This document synthesises the Committee's jurisprudence and provides states with a comprehensive blueprint for action on women's access to justice. It defines access to justice as a multi-dimensional right encompassing justiciability,

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<sup>10</sup> Neil a. Englehart & melissa miller, *the cedaw effect: international law's impact on women's rights*, 13 j. Hum. Rts. 22 (2014).

<sup>11</sup> *Id.* At art. 2(c)

<sup>12</sup> *Id.* At art. 15.

<sup>13</sup> Christine chinkin & marsha a. Freeman, *the un convention on the elimination of all forms of discrimination against women: a commentary* (2012).

availability, accessibility, good quality, and accountability of justice systems.<sup>14</sup> The Recommendation explicitly recognises that this right is impeded by numerous obstacles, including “gender stereotyping, discriminatory laws, intersecting or compounded discrimination, and procedural and evidentiary requirements”. It is within this context that the Recommendation articulates the specific duty of states regarding legal aid. Paragraph 36 establishes a direct and unambiguous link, stating: “A crucial element in guaranteeing that justice systems are economically accessible to women is the provision of free or low-cost legal aid, advice and representation in judicial and quasi-judicial processes in all fields of law”. Paragraph 37 then provides a detailed list of actionable measures, which bear repeating in their specificity. It obligates States Parties to:

- a) Institutionalise systems of legal aid and public defence that are **accessible, sustainable, and responsive** to the needs of women.
- b) Ensure services are provided in a **timely and effective manner**.
- c) Guarantee that legal aid providers are **competent, gender-sensitive, and respect confidentiality**.
- d) Conduct **information and awareness-raising programmes** for women about the existence of legal aid.

Crucially, it specifies that eligibility for legal aid “should be based on the real income or disposable assets of the woman,” particularly in cases of family conflict where a woman lacks equal access to family income. The international framework, therefore, moves the concept of legal aid beyond a procedural formality to a substantive, results-orientated right. It is not sufficient for a state merely to have a legal aid system in place; that system must be *effective* for women, a standard measured by its accessibility, quality, and responsiveness to their specific socio-economic and cultural realities. A failure to provide such a system is not just a domestic policy failing; it is a direct contravention of the state's interpreted obligations under international human rights law. This provides a powerful and precise benchmark against which the national systems of India, the United Kingdom, and South Africa can be critically evaluated.

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<sup>14</sup> Martha albertson fineman & martha t. Mccluskey, gender and law: theory, doctrine, commentary (2011).

### III. Comparative Analysis of National Legal Aid Frameworks

This part undertakes a comparative analysis of the legal aid systems in India, the United Kingdom (specifically England and Wales), and South Africa. Each country presents a distinct model, shaped by its unique constitutional history, political priorities, and socio-economic context. By examining their legal frameworks, institutional structures, and performance data through the lens of women's access to justice, this analysis seeks to expose the gap between *de jure* rights and *de facto* realities.

#### A. India: Expansive Rights versus Implementation Deficits

India's legal aid system presents a striking paradox. On paper, the framework is a model of progressivism, offering an exceptionally expansive promise of universal access to justice for all women. The foundation for this is Article 39A of the Constitution, which obligates the state to provide free legal aid to ensure justice isn't denied due to economic or other disabilities.<sup>15</sup> This constitutional vision was codified in the Legal Services Authorities Act of 1987, which created a nationwide institutional network under the National Legal Services Authority (NALSA). Its most radical feature is the unequivocal declaration that *any* woman or child is entitled to legal services, regardless of her financial means—a uniquely forward-thinking statutory right.<sup>16</sup> However, this *de jure* promise is profoundly undermined by a chronic and severe implementation deficit, creating a system that remains largely inaccessible and ineffective for the very women it is meant to serve.

The foundation of legal aid in India is Article 39A of the Constitution, which mandates that the state shall “provide free legal aid... to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”. This constitutional directive was given statutory force through the **Legal Services Authorities Act, 1987 (LSA Act)**, which established a nationwide network of legal services institutions. The most radical feature of this framework is found in Section 12(c) of the LSA Act, which unequivocally states that “a woman or a child” is entitled to legal services. This means that every woman in India, regardless of her financial status, has a statutory right to free

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<sup>15</sup> Jeet singh mann, comparative legal aid systems and india (2022).

<sup>16</sup> Legal services authorities act, no. 39 of 1987, india code (1987).

legal aid a uniquely progressive stance on paper. The institutional architecture, headed by the National Legal Services Authority (NALSA), is designed to be hierarchical and far-reaching, with State and District level authorities (SLSAs and DLSAs) intended to operationalize policy on the ground. NALSA has also formulated several schemes specifically targeting women, such as the “Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes – 2018”. The urgency and scale of this need are stark. According to the National Crime Records Bureau's (NCRB) 'Crime in India 2023' report, 448,211 cases of crime against women were registered, with 'cruelty by husband or his relatives' constituting the largest share at nearly 30%. These figures, representing only reported crimes, underscore the immense volume of legal crises confronting women, for which the state-sponsored legal aid system is the primary intended recourse. The challenge is compounded by the justice system's own delays, with the NCRB data revealing a staggering court pendency rate of 90.8% for such cases, making timely and effective legal representation all the more critical.

Despite this robust legal framework, performance data reveals a system in crisis. The India Justice Report (IJR) notes a colossal justice gap: while nearly 80% of India's population is eligible for free legal aid, only 15 million people have received such services since 1995. The representation of women within the legal aid machinery is also critically low; as of June 2022, women constituted only 25% of empanelled lawyers nationally, a figure that masks severe regional disparities. Perhaps the most damning evidence of implementation failure is the decimation of rural legal aid infrastructure.<sup>17</sup> The number of village-level legal service clinics the primary access point for marginalised rural women plummeted from 14,159 in 2020 to just 4,723 in March 2022. This collapse effectively created vast “**justice deserts,**” increasing the national average from one clinic for every 42 villages to one for every 127.<sup>18</sup> The Indian model's failure can be attributed to several interconnected factors.

The single greatest barrier is a profound **lack of awareness** among women that they are entitled to free legal aid. Many are unaware of their legal rights in general, and even fewer know that a state-sponsored mechanism exists to help

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<sup>17</sup> Upendra baxi, *the indian supreme court and politics* (2016).

<sup>18</sup> Pratiksha baxi, *public secrets of law: rape trials in india* (2014).

them. Widespread concerns about the **quality of legal aid** also persist.<sup>19</sup> Panel lawyers are often underpaid and overburdened, leading to a lack of commitment and a perception that legal aid is an inferior service, which discourages those who are aware from utilising it. Finally, the implementation of victim compensation schemes is described as “rudimentary,” with applications for compensation accounting for only 10.5% to 13% of registered sexual assault cases between 2017 and 2021. India's framework thus presents a paradox of “progressive universalism on paper, selective access in practice”.<sup>20</sup> The universal eligibility for all women, while laudable, masks deep structural failures in outreach, quality control, and infrastructure. These failures disproportionately harm the most marginalised women, for whom the right to legal aid remains purely theoretical. The problem is not the law itself, but the profound and persistent failure of political and administrative will to operationalise it.

### ***B. United Kingdom: The Era of Austerity and Restricted Access***

The United Kingdom's legal aid system offers a stark contrast to India's, representing a model where access to justice has been systematically and deliberately curtailed as a matter of government policy. The **Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)** marked a paradigm shift, transforming a welfare-based, demand-led system into a fiscally driven one, with devastating consequences for women's access to justice, particularly in family law.<sup>21</sup> Introduced in the context of a wider policy of fiscal austerity, LASPO's primary objective was to make significant savings to the legal aid budget. It achieved this by radically reducing the scope of civil legal aid. Entire areas of law were removed from scope, including most **private family law** (such as divorce and child contact disputes, except in cases of domestic abuse), employment law, housing law, and welfare benefits law.<sup>22</sup> These are precisely the areas where women disproportionately require legal assistance. Indeed, women account for 60% of civil legal aid clients, making them the group most affected by these cuts. For the areas of law that remain in scope, the Legal Aid Agency (LAA) applies stringent financial eligibility criteria an income and a

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<sup>19</sup> Gerald n. Rosenberg, *the hollow hope: can courts bring about social change?* (2008).

<sup>20</sup> Tata trusts & centre for soc. Just., *india justice report 2022* (2022).

<sup>21</sup> *Legal aid, sentencing and punishment of offenders act 2012*, c. 10 (u.k.).

<sup>22</sup> Roger smith, *justice: redressing the balance* (2019).

capital test so low that they exclude many people living in poverty, creating a justice gap for those who are “neither poor enough to qualify for legal aid nor rich enough to afford to pay for lawyers of their own”.<sup>23</sup> The consequences of LASPO have been severe and well-documented. The most significant impact has been the rise of **litigants in person** in family courts; the number of private family law cases where neither party has legal representation has tripled, increasing from 13% to 39%. This has led to the decimation of the provider base, with the number of legal aid providers dropping by 37% in the years following LASPO, creating vast “**legal aid deserts**” entire local authority areas with no providers for specific areas of law, such as housing.<sup>24</sup>

The government's claim that LASPO would protect the most vulnerable is starkly challenged by the functioning of the “**domestic violence gateway**”. While private family law cases involving domestic violence were kept in scope, victims were required to provide a specific and time-limited form of evidence to prove the abuse.<sup>25</sup> The initial requirements were so rigid that research by the organization Rights of Women found that **37% to 40% of women experiencing domestic violence did not have the prescribed forms of evidence**, such as a criminal conviction or a letter from a GP, which could be difficult, costly, or re-traumatising to obtain. The inability to pass through this gateway left victims with impossible choices: represent themselves in court against their abuser, attempt to pay for a private solicitor, or abandon their case entirely.

Data shows that 53% of women who could not get legal aid took no action, potentially leaving them and their children in unsafe situations. Following a successful legal challenge by Rights of Women in 2016, the regulations were amended, but the fundamental structure of the gateway remains a significant procedural barrier. The UK case demonstrates a “**legislated illusion**” of justice.<sup>26</sup> The failure of the system is not accidental or due to a lack of capacity; it is by design. The state has consciously prioritised fiscal austerity over its fundamental duty to provide access to justice. The “domestic violence gateway,” presented as

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<sup>23</sup> Hilary sommerlad et al., *the futures of legal education and the legal profession* (2015).

<sup>24</sup> Natalie byrom et al., *the justice problem: preparation for the digital age* (2020).

<sup>25</sup> Civil legal aid (procedure) regulations 2012, si 2012/3098, reg. 33 (u.k.).

<sup>26</sup> House of commons justice comm., *the impact of changes to civil legal aid under part 1 of laspo act 2012*, hc 311 (2014–15).

a safeguard, functions as a mechanism of exclusion, revealing how procedural hurdles can be weaponised to deny access even to a group the government explicitly claimed to be protecting. This deliberate legislative rollback has created a two-tiered justice system where the ability to enforce one's rights is increasingly dependent on private wealth, rendering the right to legal aid illusory for many of the UK's most vulnerable women.

### ***C. South Africa: Constitutional Promise Meets Systemic Hurdles***

South Africa's legal aid system was born from one of the world's most progressive constitutions, a document forged in the transition from apartheid to democracy that embodies a strong commitment to human rights. However, this constitutional promise is confronted by the nation's deep-seated realities of socio-economic inequality, a vast urban-rural divide, and the complex interplay of formal and customary legal systems. The result is a system that, while effective in its prioritised areas, leaves many of women's most critical justice needs unmet. The right to legal aid is enshrined in Section 35 of the 1996 Constitution, which guarantees the right of every accused person to a fair trial, including the right “to have a legal practitioner assigned... by the state and at state expense, if substantial injustice would otherwise result”.<sup>27</sup>

However, this constitutional promise is confronted by the nation's deep-seated realities of socio-economic inequality, a vast urban-rural divide, and the complex interplay of formal and customary legal systems. The result is a system that, while effective in its prioritised areas, leaves many of women's most critical justice needs unmet. The right to legal aid is enshrined in Section 35 of the 1996 Constitution, which guarantees the right of every accused person to a fair trial, including the right “to have a legal practitioner assigned... by the state and at state expense, if substantial injustice would otherwise result”.<sup>28</sup> This constitutional provision is, it is worth noting, primarily focused on criminal justice.

The Legal Aid South Africa Act 39 of 2014 establishes Legal Aid South Africa (LASA) as the independent entity tasked with providing legal aid, broadening the mandate to include civil matters and operating through a network of Justice

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<sup>27</sup> S. Afr. Const., 1996, 35.

<sup>28</sup> Ibid

Centres.<sup>29</sup> A defining feature of the South African model is its overwhelming prioritisation of criminal law, reflecting the direct constitutional mandate.<sup>30</sup> Performance data reveals that 87% of all new matters handled by LASA were criminal cases, with only 13% being civil cases. While regulations prioritise certain civil matters, such as those involving children, evictions, and domestic violence, these areas must compete for a small fraction of the overall resources.<sup>31</sup>

The World Bank's *Women, Business and the Law 2024* report highlights a significant disconnect. While South Africa scores a relatively high 77.5 out of 100 for its legal frameworks protecting women's rights, its score for supportive frameworks which includes mechanisms for access to justice is a much lower 40.0 out of 100.<sup>32</sup> This powerfully illustrates the gap between rights on paper and the mechanisms available to enforce them. Furthermore, access to justice is severely hampered by geography. The legal profession and LASA's Justice Centres are heavily concentrated in urban areas, a phenomenon described as the "big city syndrome". This leaves vast rural areas with little to no access to formal legal services. For many rural women, the only accessible form of justice is through traditional or customary court systems, which are often deeply patriarchal; testimonies reveal that women are frequently denied the right to represent themselves and are excluded from the councils that decide disputes.<sup>33</sup> South Africa's constitutional promise of justice thus remains unfulfilled for a large segment of its female population due to intersecting barriers. First, the systemic de-prioritisation of civil legal aid means that the legal issues most central to women's lives family law, gender-based violence (GBV), and property rights are chronically under-resourced.<sup>34</sup>

Second, the stark urban-rural divide creates an insurmountable physical barrier for millions of women.

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<sup>29</sup> Legal aid south africa act 39 of 2014 (s. Afr.).

<sup>30</sup> Heinz klug, *constituting democracy: law, globalism and south africa's political reconstruction* (2000).

<sup>31</sup> Legal aid s. Afr., *annual report 2022/23* (2023).

<sup>32</sup> Karl klare, *legal culture and transformative constitutionalism*, 14 s. Afr. J. Hum. Rts. 146 (1998).

<sup>33</sup> World bank, *women, business and the law 2024* (2024).

<sup>34</sup> *Ibid*

Third, despite progressive laws, survivors of GBV face systemic inefficiencies and bias within law enforcement, with long backlogs at LASA making justice seem “elusive and unattainable”.

The South African system thus illustrates a “prioritisation paradox”.<sup>35</sup> The state effectively fulfils its most explicit constitutional duty providing legal defence in criminal matters while systemically marginalising the civil justice needs that are fundamental to achieving gender equality.<sup>36</sup> This is not a failure of organisational capacity but a consequence of a narrow interpretation and resourcing of the constitutional mandate. The right to legal aid becomes illusory for women, not through legislative cuts or operational collapse, but through a deliberate policy choice that sidelines the very legal issues most critical to their safety and empowerment.<sup>37</sup>

#### **IV. Synthesis and Discussion: Converging Challenges and Divergent Paths**

The comparative analysis of India, the United Kingdom, and South Africa reveals that while the legal and political contexts of their legal aid systems differ dramatically, the outcome for a significant number of women is distressingly similar: a right that exists on paper but is inaccessible in practice. A synthesis of their approaches and failures reveals both divergent political paths and converging systemic challenges.<sup>38</sup>

The three countries present starkly different approaches to eligibility, yet all struggle with practical barriers that undermine their stated goals. As summarised in Table 1, **India** offers a model of universal *de jure* eligibility for all women, a uniquely progressive stance.<sup>39</sup> In contrast, the **UK** employs a highly restrictive model, combining stringent means tests with a procedural, evidence-based gateway for family law. **South Africa** uses a strict means test, with its scope

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<sup>35</sup> Aninka Claassens & Ben Cousins, *Land, Power & Custom: Controversies Generated by South Africa's Communal Land Rights Act* (2008).

<sup>36</sup> Cheryl Walker, *Piety in the Sky? Gender Policy and Land Reform in South Africa*, 10 *J. Agrarian Change* 113 (2010).

<sup>37</sup> *Ibid*

<sup>38</sup> Julia Dickson-Gilmore & Carol La Prairie, *Will the Circle Be Unbroken? Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change* (2005).

<sup>39</sup> Sarah Buhler et al., *Catching Knowledge: Portraits of Community-Based Legal Clinics in Canada* (2021).

heavily skewed towards criminal law, thereby limiting access for most civil matters.

Feature	India	United Kingdom (England & Wales)	South Africa
<b>Constitutional/Legal Basis</b>	Constitution, Art. 39A; Legal Services Authorities Act, 1987	Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)	Constitution, Sec. 35; Legal Aid South Africa Act 39 of 2014
<b>Eligibility for Women</b>	<b>Universal Eligibility:</b> All women are entitled to free legal aid, irrespective of financial means.	<b>Highly Restrictive:</b> Subject to strict income and capital means tests. For private family law, must also pass the “domestic violence gateway”.	<b>Means-Tested:</b> Subject to a strict income test. No automatic eligibility for women in civil matters.
<b>Scope of Civil Legal Aid</b>	<b>Broad:</b> Covers all civil and criminal matters, including family law, property disputes, and domestic violence.	<b>Severely Restricted:</b> Most private family law, employment, housing, and welfare benefits law removed from scope by LASPO.	<b>Limited and Under-Resourced:</b> Resources are overwhelmingly allocated to criminal law (87% of cases).
<b>Key Institutional Body</b>	National Legal Services Authority (NALSA)	Legal Aid Agency (LAA)	Legal Aid South Africa (LASA)

*Table 1: Comparative Overview of Legal Aid Eligibility and Scope for Women*

Despite these legal differences, the *de facto* experience for women converges around a common set of obstacles.<sup>40</sup> In India, the universal right is nullified by a

<sup>40</sup> Alan Paterson & Tamara Goriely, *A Reader on Resourcing Civil Justice* (1996).

lack of awareness and a crumbling rural infrastructure. In the UK, even women who are the explicit targets of protection victims of domestic violence are blocked by procedural hurdles and the absence of local providers in “legal aid deserts”.<sup>41</sup> In South Africa, a woman who meets the means test for a civil matter may find the service unavailable due to resource allocation or geographical distance.<sup>42</sup> In all three systems, the legal right to aid is consistently defeated by non-legal, practical barriers.<sup>43</sup>

The divergent paths of the three systems reflect distinct political ideologies. The UK's austerity model represents a clear political choice to subordinate access to justice to fiscal policy, framing legal aid as a discretionary public expenditure to be minimised. India's developmental, rights-based model, at least on paper, is rooted in a vision of law as a tool for social transformation, but it fails due to a chronic lack of political will to allocate the necessary resources. South Africa's constitutional compliance model is driven by the need to comply with the explicit constitutional right in criminal cases, leading to the neglect of a broader, substantive vision of access to justice crucial for gender equality.

Despite these different models, the analysis reveals converging systemic failures that disproportionately impact women, as highlighted by the performance indicators in Table 2. In all three jurisdictions, there are significant concerns about the quality of state-funded legal aid, linked to low remuneration or overburdened lawyers. A pervasive lack of awareness and information gaps are critical barriers, particularly in India and South Africa. Finally, geographical disparities create stark barriers, with the urban-rural divide in India and South Africa and the austerity-created “legal aid deserts” in the UK effectively excluding millions of women from the formal justice system.

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<sup>41</sup> Rebecca I. Sandefur, *access to justice: sociology of legal aid and representation* (2016).

<sup>42</sup> Sally Engle Merry, *human rights and gender violence: translating international law into local justice* (2006).

<sup>43</sup> Beth A. Simmons, *mobilizing for human rights: international law in domestic politics* (2009).

<b>Indicator</b>	<b>India</b>	<b>United Kingdom (England &amp; Wales)</b>	<b>South Africa</b>
<b>% of Female Panel Lawyers</b>	~25% (as of June 2022)	<i>Data not specified</i>	<i>Data not specified</i>
<b>Trend in Unrepresented Litigants (Family Court)</b>	<i>Data not specified</i>	Tripled from 13% to 39% post-LASPO	<i>Data not specified</i>
<b>Key Access Barrier for Domestic Violence Victims</b>	Lack of awareness, social stigma, poor quality of service.	Inability to meet strict evidentiary requirements of the “domestic violence gateway” (~40% of victims).	Systemic inefficiencies, lack of trauma-informed support.
<b>Key Rural Access Barrier</b>	Collapse of village-level legal aid clinics.	“Legal aid deserts” due to closure of provider offices.	“Big city syndrome” - concentration of offices in urban centers.
<b>Systemic Resource Allocation Bias</b>	N/A (Theoretically broad scope).	Prioritization of budget cuts over access to justice.	87% of resources allocated to criminal matters.

*Table 2: Selected Performance and Impact Indicators for Women's Access to Justice*

In all three countries, a vibrant civil society sector has emerged to fill the void left by the state. Organisations like Majlis in India, Rights of Women in the UK, and the Women's Legal Centre in South Africa play a crucial role in providing direct legal services, conducting vital advocacy, and litigating strategically to challenge discriminatory practices. While their work is indispensable, their very existence and the overwhelming demand for their services serve as a powerful indictment of state failure. They are a necessary but insufficient and unsustainable solution to a problem that is fundamentally a state responsibility.

## V. Conclusion

This comparative analysis set out to determine whether legal aid for women functions as a genuine mechanism for accessing justice or as an illusory right. The evidence from India, the United Kingdom, and South Africa demonstrates that while the degree and causes of failure differ, no country in this study provides a legal aid system that fully realises a substantive right to justice for all women. The gap between the *de jure* promise and the *de facto* reality is pervasive and profound. The conclusion, therefore, must affirm the thesis: for a vast number of women, the right to legal aid is indeed illusory.

- a) In **India**, the right is illusory for the rural, illiterate woman who has never heard of NALSA and for whom the nearest legal aid clinic is now hundreds of villages away; the universal legal entitlement is rendered meaningless by a failure of communication and infrastructure.
- b) In the **United Kingdom**, the right is illusory for the victim of financial abuse who cannot produce the “correct” form of evidence to pass through the domestic violence gateway and for the low-wage single mother living in a “legal aid desert”; the right has been legislated out of existence for many and procedurally barred for others.
- c) In **South Africa**, the right is illusory for the rural woman seeking a divorce or protection from a violent partner, whose case is deemed a low priority in a system overwhelmingly geared towards criminal defence, and whose only alternative is a patriarchal customary court; the right is nullified by a systemic de-prioritisation of her justice needs.
- d) In each case, the outcome is the same: women are left to navigate complex and often hostile legal systems alone or to abandon their pursuit of justice altogether. The promise of equality before the law is broken, and the state fails in its fundamental duty to protect the rights of its most vulnerable citizens.

Achieving a substantive right to justice requires a multi-pronged approach that addresses the unique failings of each system, guided by the comprehensive blueprint of CEDAW's General Recommendation No. 33. The following policy recommendations are proposed:

***Multi-layered Policy Recommendations***

**For India**, the path forward requires a massive investment in awareness and infrastructure.

- a) **Public Awareness:** Launch sustained, multilingual public awareness campaigns through mass media and community networks to inform women of their universal right to free legal aid.
- b) **Infrastructure:** Fund a dedicated national programme to re-establish and expand the network of village-level legal services clinics, ensuring a physical access point for every citizen.
- c) **Quality of Service:** Significantly increase the remuneration for panel lawyers to professionalise the service and establish a robust, independent mechanism for monitoring service quality.

**For the United Kingdom**, change must begin with legislative reform of LASPO.

- a) **Repeal Scope Cuts:** Parliament should restore legal aid for early advice and representation in private family, housing, and employment law.
- b) **Abolish the Gateway:** The current evidence-based domestic violence gateway should be abolished and replaced with a system where a credible claim of domestic violence is sufficient to grant eligibility.
- c) **Reinvestment:** The Ministry of Justice must undertake a comprehensive review and strategically reinvest in contracts to eliminate “legal aid deserts” and ensure a sustainable network of providers.

**For South Africa**, reform requires a rebalancing of legal aid funding and focus.

- a) **Re-prioritisation of Funding:** The government and LASA must allocate significantly greater resources to civil legal aid, recognising that civil justice is equally fundamental to constitutional rights, particularly for women.

- b) **Rural Service Delivery:** Invest in innovative and state-supported models for rural service delivery, including expanding the role and training of accredited community-based paralegals.
- c) **Customary Justice Reform:** Actively engage with traditional leaders to facilitate the reform of customary justice practices, ensuring they align with constitutional principles of gender equality and due process.

Across all jurisdictions, states must commit to collecting and publishing disaggregated data on legal aid beneficiaries to enable effective monitoring and evidence-based policymaking. Furthermore, states should move from a model of passive reliance on NGOs to one of formal partnership, providing sustainable funding to the civil society organisations delivering essential frontline services.