WORKING OF LEGAL AID SCHEMES: STILL A DISTANT DREAM?

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Abstract

Our Constitution provides for free legal aid. We even have plenty of laws when it comes to the subject. Our Apex Court has time and again emphasised on the intimate connection between free legal aid and fair procedure. But despite all these so called rights and laws, the reality of legal aid in India still seems like a farfetched idea when it comes to real implementation. A country where the gap between the haves and have nots is widening every day, the access to justice has also become a luxury for those who cannot even imagine affording it. Ironically, such a right must be one of the basic things provided to the people in any country. Though on paper, there are a large number of legal aid schemes but there is paucity when it comes to availability of data on impact and reach of these legal aid schemes and consequently this paints a bleak picture as to the effectiveness of these steps taken by the State. This article is an attempt at pointing out the gap of what exists on paper and what actually happens on ground when it comes to this right to free legal aid to the poor and the needy.

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INTRODUCTION

A well-recognised voice in the area of legal aid, Professor B.B. Pande notes that right of access to justice and legal aid is a constitutionally recognized right in India. However, this right remains woefully under-enforced. The sections which are resourceless and seek access to the implementation of this right have faced numerous hurdles when it comes to its proper implementation.[1] He further states that the right to access to justice has been recognised by the Indian legal system with a further right of legal aid to all; along with a special focus on poor access seekers, but when it comes to the ground realities, such a so called 'right' translates into a worthless piece of legislation for the poor and resourceless population out there. This is because of diverse reasons:

Firstly, the so called legal aid delivery administration, which may be at the National, State District or Taluka levels is barely capable of dealing with the challenges of providing vast legal aid to the population. Secondly, despite the presence of certain minimum organisational set ups for providing legal aid; the mere presence of 'access blockers' that succeed in manipulating the system and a clear dearth of lack of initiative on behalf of access seekers keeps the needy out of the reach of legal aid schemes. Thirdly, it can be seen that there is a clear lack of bona fide NGO/CSO support for the cause of delivering legal services. Lastly, the fact that there is genuine recognition for the theoretical base of the right to access to justice amongst law teachers and students but the improper structuring of legal education has resulted in not being able to provide a concrete platform to act as a support for discussing the actual deliverance of this 'right'.[2]

Furthermore, he laments that "legal academicians still remain insufficiently motivated to be partners in the delivery of justice to the resource-less and the poor."[3] Professor Pande's remarks might sound harsh but sadly, they also reflect the ground realities of legal aid in the country. The main aim of providing free legal aid is to ensure equality before the law and it should not be affected by a person's indigence or poverty due to their inability to afford proper legal representation.

The first part of the paper attempts at providing a basic definition of legal aid along with throwing light on the justification of legal aid as to why India needs legal aid in the first

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[1] B.B Pandey, *Moral and Ethical Issues Confronting Students' Legal Aid Clinics in the Outreach of Legal Services to the Resources-Less and the Poor*, 1 NLUD 33, (2013).

[2] *Ibid.*

[3] *Ibid.*

place. A look at the existence of this term and the right associated with it in our Constitution further clarifies that legal aid is an indispensable part of the Indian jurisprudence. The third part of this paper is based on a research study which lifts the veil and reveals the ground realities of the legal system prevailing in the country and how oppressive it has become for the poor and downtrodden.

Finally, the author ends with suggesting reforms that can be ushered in to reduce this gap between the intentions of the legislators while formulating legal aid schemes and the real implementation of these schemes on the ground.

Introduction

Definition of Legal Aid

First and foremost, it is quite essential to define what exactly legal aid is. But before that can be done, the important concept of a social contract between the sovereign and the people needs to be discussed. According to various political philosophers, the people made a contract with the sovereign to adhere to its authority for establishment of a civil society.[4] Establishment of such civil society was essential to ensure that there was law and order in the society. And for effective enforcement of laws and execution of orders, the judicial system was created. This particular judicial system owes its existence to the supreme law of the land, which is the Indian Constitution in India.

Furthermore, the Indian Constitution provides for an independent and impartial judiciary and the courts are given power to protect the constitution and safeguard the rights of people without paying any heed to their financial status. It needs to be noted that the aim of the Constitution is to provide justice to all. For this, the directive principles provide that the judiciary needs to protect the basic rights of the poor and those of the society as well.[5]

Legal aid can be defined in numerous ways as it is a very subjective interpretation from various point of views. Conventionally, ‘Legal Aid has been taken to mean the organized effort of the bar council, the community and the government to provide the services of

[4]THOMAS HOBBES, LEVIATHAN (1651).
[5] Dr. G. Mallikarjun, *Legal Aid In India And The Judicial Contribution*, 13 NALSARLawRev 234, (2013).

lawyers free, or for a token charge, to persons who cannot afford the usual exorbitant fees'[6]. It can also be said that the inability to consult or to be represented by a lawyer may amount to the same thing as being deprived of the very security of equality before the law.

In the case of *Hussainara Khatoon* v. *State of Bihar*[7], it was held that if any accused is not able to afford legal services then he has a right to free legal aid at the cost of the state. In this case, Justice P.N Bhagwati succinctly puts across the importance of free legal services in the following terms:

> *"The procedure under which a person may be deprived of his life or liberty should be 'reasonable fair, and just.' Free legal services to the poor and the needy is an essential element of any 'reasonable fair and just' procedure. A prisoner who is to seek his liberation through the court's process should have legal services available to him."*

The court further observed that economic status must not be a threshold for providing the citizens access to institutions and the available remedies under the system of law. It can be said that the legal aid movement started with the basic aim that "every person must have equal opportunity of access to the remedies provided by the courts"[8]

Justification of Legal Aid

If we look back to this country's history, it can be observed that the percentage of poor people was never less, but law and the legal system had not pervaded their lives to the extent to which it was needed. Inability to utilize the legal system can be and often is disastrous for the poor in ways that are almost unimaginable for others. Lack of education and the thin economic margins of which the poor live make law a crucial instrument of survival. Yet for so many this essential instrument is beyond reach. A number of philosophers, jurists and intellectuals, therefore uphold the view that the principle of equality of justice, which every civilised nation needs to uphold with due respect, can be observed by making the legal system accessible to every man, irrespective of his or her economic status or capabilities.

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[6] Ms. Sangita Dhingra Sehgal, *Delivery Of Legal Services : A Critical And Comparative Study Of Law With Special Reference To Delhi* (2011) (Unpublished Ph.D. Thesis, Amity Institute Of Global Legal Education And Research Amity University Uttar Pradesh, Noida).

[7] Hussainara Khatoon v. State of Bihar, (1979) 3 AIR 1369 (SC).

[8] Md Nazrul Islam, *Legal Aid Movement in the U.K. U.S.A. and Bangladesh; A Comparative Study*, 3 DULJ 119 (1992).

The motivating philosophy of the legal aid movement was clearly explained by Reginald Heber Smith, pioneer leader of the American legal aid movement in his book '*Justice And The Poor*'[9], he said:

> *"Differences in the ability of classes to use the machinery of the law, if permitted to remain, lead inevitably to disparity between the rights of classes and when the law recognizes and enforces a distinction between classes ……..democracy is at an end…. the historic need of civilization is frustrated".*[10]

Justice and the Poor expanded awareness of the importance of legal aid and redefined the provision of legal aid to the poor as a national issue connected to the efficacy of democracy and the stability of the nation.

When it comes to the poor and their contact with the law, they have almost always landed on the wrong side of law. Thus, the system, then turns into a system which is not of much benefit to them. The law then turns into a mysterious and forbidding creature which somehow always seems to be taking something away from them. For them, it is no more an appositive and constructive social device for shaking up the socioeconomic order in the society. As an unfortunate result, the legal system loses its credibility to the weaker sections of this society. It then becomes necessary to provide equal justice to all which can only be done through a dynamic and activist scheme providing legal aid.[11]

International Mandate to Legal Aid

The origin of this constitutional obligation can also be traced to the Universal Declaration on Human Rights[12] (See Articles 8, 10 and 11) and the International Covenant on Civil and Political Rights.[13] Article 51(c) of the Constitution casts a duty on the State to foster respect for international law and treaty obligations. Right to a fair trial is, therefore, a universally accepted norm of all well-established legal systems.

The United Nations Guidelines and Principles on Access to Legal Aid in Criminal Justice Systems[14], was unanimously adopted by the General Assembly in 2012. The guidelines

[9]HERBER SMITH, JUSTICE AND THE POOR 6 (1919).
[10] HERBER SMITH, JUSTICE AND THE POOR 6 (1919).
[11]Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar, (1979) 3 SCR 532 (SC).
[12] Universal Declaration of Human Rights, The United Nations (1948).
[13] International Covenant on Civil and Political Rights, The United Nations General Assembly (1966).
[14] The United Nations Guidelines and Principles on Access to Legal Aid in Criminal Justice Systems, United Nations Office on Drugs and Crime (2012).

recognize a right to legal aid, and emphasize that legal aid is to be considered an integral part of any criminal law system aiming to provide justice based on the principle of rule of law. This principle is the foundation of the enjoyment of all other rights which includes the right to a fair trial; which is an essential safeguard that ensures basic fairness in the criminal justice process. The Guidelines put forth the idea that States need to provide a guarantee to the right of free legal aid in their own national systems by virtue of providing such a right at the highest possible levels under their law, including the country's Constitution.

Constitutional Mandate of Legal Aid

If we look at the Indian Constitution, Article 39A provides that it's the State's responsibility to ensure that the operation of the legal aid system must provide justice in general on the basis of equal opportunity and provide free legal aid in particular by taking the aid of suitable legislation, scheme or in any other means to ensure that equal opportunities are provided to all the citizens for securing justice and it does not turn into a dead letter because of mere economic or any other kind of disability.[15] Furthermore, Articles 14 and 22(1) of the Constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Thus, legal aid "aims to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society."[16]

The Indian Constitution is a glowing example to lawyers all around the world who argue that there can be no rule of law without access to legal assistance, and therefore it becomes even more incumbent on the state to provide legal assistance to those who cannot afford it due to financial constraints.

Article 39A of the Constitution, which is headed "Equal justice and free legal aid" states:

> *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.*

[15]Dr. G. Mallikarjun, *Legal Aid In India And The Judicial Contribution*, 13 NALSARLawRev 234, (2013).
[16]Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar, (1979) 3 SCR 532 (SC).

This Directive Principle was enacted in 1976[17] during Emergency Rule, but little was done to provide justice to those who needed it until the Supreme Court of India in *Hussainara Khatoon* v. *State of Bihar*[18] observed that the guarantee under Art 21 to a 'reasonable, fair and just' procedure when a person's liberty or life is at stake included a right to legal assistance. Justice Bhagwati, in the landmark case[19], puts across the relevance of the constitutional right of legal aid in terms of Article 39A and Article 21 in the following words:

> *Article 39A also emphasises that free legal service is an inalienable element of 'reasonable, fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal service is therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of, an offence and it must be held implicit in the guarantee of Art. 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services, on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.*

A year later in *Khatri* v. *State of Bihar*[20] the Supreme Court expressed its dissatisfaction over the Bihar Government's failure to implement its directive in *Hussainara Khatoon*[21], pleading financial constraints. Rejecting this argument, the Court said that free legal aid had to be provided to the accused at every stage of the trial by the State. The Court noted that there is a constitutional obligation on the State to provide free legal services to an accused who is indigent the moment he is produced before the Magistrate and not only at the stage of the commencement of the trial. Furthermore, it has to be seen that the jeopardy to an accused's personal liberty begins the moment they are arrested and produced before the Magistrate. It is at this very stage that the accused gets the initial and also the first opportunity to apply for bail and also to resist remand to either police or jail custody. It is at this stage that the accused needs proper and competent legal advice to be able to get a fair, just and reasonable representation. The Apex Court therefore held that a constitutional obligation falls on the

[17] As amended by The Constitution (Forty-Second Amendment) Act, 1976.
[18] Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar, (1979) 3 SCR 532 (SC).
[19] Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar, (1979) 3 SCR 1639 (SC).
[20] Khatri v. State of Bihar (1981) 37 AIR 627 (SC).
[21] Hussainara Khatoon & Ors v. Home Secretary, State Of Bihar, (1979) 3 SCR 1639 (SC).

State to provide free legal aid and thus representation to an indigent accused not only at the stage of the commencement of trial but also at that stage when he is first produced before the Magistrate and also at those times when he is remanded from time to time.[22]

Recently in *Ajmal Kasab* v. *State of Maharashtra*[23], the Court once again reiterated the aforesaid principles and said a person arrested needs a lawyer at the stage of his first production before the magistrate, to resist remand to police or jail custody and to apply for bail. The court further elaborated that the accused would need a lawyer when the chargesheet is submitted and the magistrate applies his mind to the chargesheet with a view to determine the future course of proceedings. He would also need a lawyer at the stage of framing of charges against him and he would, of course, need a lawyer to defend him in the trial. The court clearly stated that to deal with one terrorist, we cannot take away the right given to the indigent and under-privileged people of this country by this Court thirty one (31) years ago. This particular judgment gives chilling details of the carnage committed by the terrorist on trial but despite it all, the Court recognises the accused's right to counsel and fair representation. The defence counsel's submission that the path of rule of law needs to be covered fully and we cannot set different standards for different individuals is an insight into the basic principles of our Constitution. It was further submitted that for a trial to be fair, simply the offer of legal aid cannot be said to be enough unless this legal aid has been provided to the accused in letter and spirit.[24]

Further, the Apex Court has held that every accused unrepresented by a lawyer has to be provided a lawyer at the commencement of the trial, engaged to represent him during the entire course of the trial. Even if the accused does not ask for a lawyer or he remains silent, it is considered the Constitutional duty of the court to provide him with a lawyer before commencing the trial.[25]

Realities of Court Systems and Legal Aid In India

The right to access to justice and legal aid is a constitutionally recognized right in India. However, this right remains pitifully under-enforced. The existence of numerous obstacles

[22] Dr. G. Mallikarjun, *Legal Aid In India And The Judicial Contribution*, 13 NALSARLawRev 234, (2013).
[23] Ajmal Kasab v. State of Maharashtra (2012) 9 SCC 1 (SC).
[24] *Ibid.*
[25] Suk Das v. U.T of Arunanchal Pradesh. (1986) SCC (Cri) 186 (SC).

have almost defeated the successful implementation of this right for the benefit of the people of the society who are resourceless and seek access to the system.[26] The right to legal aid receives greater protection in the Indian legal system, but in practice the funds and assistance made available to the litigants is absolutely inadequate for achieving this objective.

From 2010 to 2012, a team of academic and civil society researchers conducted extensive ethnographies of litigants, judges, lawyers, and courtroom personnel within multiple districts in three states: Maharashtra, Gujarat, and Himachal Pradesh.[27] The findings of this study highlighted a very intricate web of influential factors which included infrastructure, staffing, judicial training, costs and continuances, legal awareness, caste and gender discrimination, power imbalances and numerous other factors which ultimately gravely impacted the access of justice in the lower tier of judiciary in India.[28]

The study makes a number of very crucial findings on which the conclusions on the effectiveness of our legal aid system are based. The author has concentrated exclusively on this study because it covers the lower tier of judiciary. In the author's opinion, the litigants in the lower tier of the judiciary are most in need of proper legal aid as these courts are the court of first instance for the poor.

The research study reveals that "socioeconomically disadvantaged claimants who lack proportional demographic representation in public office have extremely limited institutional options for redressing their grievances concerning basic needs like water, food, health care, sanitation, education, and safety."[29] Further, the political and bureaucratic class are extremely unresponsive to the needs of the people. These findings are based on personal interviews conducted by the research team in Maharashtra, Gujarat and Himachal Pradesh.

Conclusions provided by the research study

The research conducted provided the following conclusions.

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[26]B.B Pandey, *Moral and Ethical Issues Confronting Students' Legal Aid Clinics in the Outreach of Legal Services to the Resources-Less and the Poor*, 1 NLUD 33, (2013).

[27] Articles by Maurer Faculty. Paper 1302, *Grappling at the Grassroots: Access to Justice in India's Lower Tier*, Jayanth K. Krishnan, Shirish N. Kavadi, Azima Girach, Dhanaji Khupkar, Kalindi Kokal, Satyajeet Mazumdar, Nupur, Gayatri Panday, Aatreyee Sen, Aqseer Sodhi, and Bharati Takale Shukla, *available at:*http://www.repository.law.indiana.edu/facpub/1302 (last visited on June 14, 2016).

[28]*Id* at 501.

[29]Rohini Pande, *Can Mandated Political Representation Increase Policy Influence for Disadvantaged Minorities? Theory and Evidence from India*, 93 AM. ECON. REV. 1132 (2003).

- According to litigants, corruption permeates every aspect of grievances against the government and private disputes to the point where these institutions were seen as virtually impotent. The study quotes a trade union activist in the following manner:

Political leaders somehow find a method of [only] intervening in labour disputes which are hyped by the media. If they realize they aren't becoming popular, then they use their petty power to extort money—usually from the employer and sometimes from the employees as well. In the latter instance, we are left to fight two battles—one with the employer and another with the politicians.[30]

- Infrastructure within the district and sub-district courts is extremely poor. There is a lack of standardization in digital files, and physical files are frequently haphazardly catalogued in cramped storage spaces. Furthermore, electrical power is irregular, causing lights and fans to shut down for extended periods of time.[31]

- Court staffing is inadequate at all levels. The lack of responsive, honest, and competent courtroom staff to handle simple matters like scheduling frequently leads to even greater confusion, inefficiencies, and delays.[32]

- Because very little legal aid is provided by either the bar or the state, many judges see themselves as simultaneously filling the role of educator, representative, and adjudicator for the poor.[33]

- Another major problem that was noticed under the study was with regards to illiteracy of the litigants. This is a problem that impacts both lawyers and the litigants. Ultimately leading to misunderstandings as a direct result of communication gaps.

- Indigent litigants cited costs as a major barrier to accessing the courts.[34] Frequently, additional fees emerge as litigation progresses, such as court fees, photocopying fees,

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[30]Articles by Maurer Faculty. Paper 1302, *Grappling at the Grassroots: Access to Justice in India's Lower Tier*, Jayanth K. Krishnan, Shirish N. Kavadi, Azima Girach, Dhanaji Khupkar, Kalindi Kokal, Satyajeet Mazumdar, Nupur, Gayatri Panday, Aatreyee Sen, Aqseer Sodhi, and Bharati Takale Shukla, *available at:*http://www.repository.law.indiana.edu/facpub/1302 (last visited on June 14. 2016).

[31]*Id* at 515.

[32]*Id* at 516.

[33]*Id* at 518.

[34]Articles by Maurer Faculty. Paper 1302, *Grappling at the Grassroots: Access to Justice in India's Lower Tier*, Jayanth K. Krishnan, Shirish N. Kavadi, Azima Girach, Dhanaji Khupkar, Kalindi Kokal, Satyajeet Mazumdar, Nupur, Gayatri Panday, Aatreyee Sen, Aqseer Sodhi, and Bharati Takale Shukla, *available at:*http://www.repository.law.indiana.edu/facpub/1302 (last visited on June 14, 2016).

file-retrieval fees, scheduling or calendar fees for court appearances, and "refresher" fees contingent on the length of the case, as well as unpredictable extra-legal fees.[35] A litigant summarized the experiences of many in these words:

During court days, one has to be sitting at court for the whole day. We wait for our number to be called and no one knows when that will be. We cannot go to eat or go to the washroom as our case may be called at any moment. We can't even [go to] drink water just in case we will be called. There are no facilities for the poor people in the court and it is only . . . the rich people [who can afford to deal with this system][36]

- Specialized court judges in Maharashtra expressed hesitancy regarding potentially unfettered judicial power due to great power imbalances between parties in these forums.[37] In the absence of formal due process rules, disadvantaged litigants are especially vulnerable to biases and power politics. The government is a party in many cases concerning water and electricity, and judges may be inclined to rule in its favour in the absence of formal rules or subject-matter training.[38]

The Way Forward

In the book *Civil Justice in Crisis*, published in 1999, Adrian Zuckerman edited a series of articles reviewing the state of civil justice around the world. The title chosen for the book summed up a rather bleak assessment of civil justice in common law and civil law jurisdictions and developed and developing countries. Zuckerman stated:

> *A sense of crisis in the administration of civil justice is by no means universal, but it is widespread. Most countries represented in this book are experiencing difficulties in the operation of their system of civil justice. Whether the difficulties take the form of exorbitant costs or of excessive delays, they have serious implications…[C]ost can place access to justice beyond the reach of citizens with limited means. Delays may render access to justice useless.*[39]

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[35] *Id* at 521.
[36] *Id* at 522.
[37] *Id* at 524.
[38] *Ibid.*
[39] A. ZUCKERMAN, CIVIL JUSTICE IN CRISIS: COMPARATIVE PERSPECTIVES OF PROCEDURE (1999).

Unfortunately, it is a melancholic truth that civil justice always appears to be in a state of grave crisis and always in the midst of reforms designed to mitigate it. Where there have been no recent reforms, there are usually urgent calls for them. These calls, being often blatantly ignored by our very own existing systems.

Given the limited public funds available for civil justice in both the developed and the developing countries, the one thing on which there is almost universal consensus is the need for structural reforms. Without structural reform, access to justice will remain or progressively become, beyond the reach of most people and not just the extremely poor and downtrodden. For those brave, desperate or maybe foolish enough to litigate their own claims, the chances of their cases being determined on the merits after a full and fair hearing are not very high either as the cost of hearing their claims and defences will be higher than they would be in the the case if legal assistance were affordable.

However because of the limited public funding of civil justice systems in many parts of the world, many lawyers have done a great of deal of thinking about what is needed to help the poor and disenfranchised protect their legal rights at the lowest possible cost.[40]

A number of suggestions can here be put forth which might greatly help in providing legal aid to the poor.

Procedural reforms

Herbert Smith in his book asserted that the principal problems regarding justice for the poor were procedural and not substantive. These procedural problems included significant delays in litigation stemming from the inefficient organization of the court system, the high cost of court fees, and the expense of counsel. In other words, it was the court system that needed to become more efficient.

When it comes to India, it is an unfortunate fact that we still follow archaic procedures that have not been updated in centuries. This has resulted in long drawn out and cumbersome procedures in the Courts. On an average, cases go on and on for decades in this legal system. The strict procedure and their inherent lack of flexibility has ensured that litigants are caught up in cases for generations. Such a situation becomes even more difficult for the ones who can barely survive. The legal costs of courts, lawyers, filing etc. is enough to ruin even the

[40]Andrew Higgins, *Legal aid and access to justice in England and India*, 26 NLSI Rev 13 (2014).

financially secure. The position of the poor and downtrodden is even worse because it becomes extremely hard for them to even sustain themselves.

Encouraging alternate dispute resolution mechanisms like mediation, Lok Adalats etc. might be a way out for poor litigants who are mystified of the court system in the country. Such mechanisms are simpler and thus cheaper in comparison to approaching the courts. Simplified procedures will also ensure that the poor are able to save on costs and time when it comes to resolving their disputes. But having said that, it also needs to be noted that there are certain kinds of cases that cannot be subjected to such dispute resolution mechanisms. For such cases, it becomes essential that a simpler form of court procedure is adopted which is cheaper and less intimidating in nature. One such example of a simplified procedure is that of public interest litigation. The Supreme Court has recognised such a right of the citizens which can be exercised even through letters to the Court. This judicial activism by the court needs to be lauded for its simplicity.

Regulation of lawyers' fees and/or lawyers' time through mandatory participation in pro bono or fixed fee schemes targeted at indigent litigants

In some civil law countries, no one can appear in court without legal representation and tariff systems are used to regulate legal costs, including maximum lawyer-client fees.[41] Italy is perhaps a notable example and despite repeated challenges to its rules on competition grounds, the European Court of Justice has continued to reject them and even praised the Italian model as an effective way of promoting access to justice.[42] Instead of de-regulating the legal services market, another option could be more regulation of the legal services market by making legal representation compulsory for persons involved in legal proceedings, whilst also regulating the fees lawyers can charge for their services so as to ensure that representation is affordable to all persons otherwise not eligible for legal aid.[43]

A possible alternative to regulating lawyers' fees per se is to require lawyers to dedicate a small percentage of their billable hours to representing indigent litigants and/or doing pro bono work. In essence, make some ‘public service’ work compulsory for all practicing lawyers. This is a radical proposal but there are some partial precedents for it. For example, in Australia several governments link the award of legal service work from government

[41] *Ibid.*

[42] See Commission v. Italy, (C-565/08) (European Court of Justice Grand Chamber, 29 March 2011) ECR 2011, I-02101.

[43] Andrew Higgins, *Legal aid and access to justice in England and India*, 26 NLSI Rev 13 (2014).

departments to a requirement to carry out a specified amount of pro bono work.[44] Similarly, the New York Bar requires lawyers to engage in a set amount (fifty hours in this case) of pro bono work as a condition of admission to the bar.[45] Other American States are planning to adopt the same or similar rules in their own jurisdiction.[46]

With the high quality and quantity of lawyers coming up in India, we can take inspirations from these systems and try to implement something similar in India.

Increasing the quantity and quality of legal aid lawyers

As a student, in the author's limited experience in the field of legal aid, it has been noticed that the number of lawyers employed by the State authorities is woefully small in number. The quality of these lawyers is also dubious in a number of cases due to their lack of experience in the field. Unfortunately, there are no existing reports or studies on the number of cases handled by such lawyers and their effectiveness.

Increasing focus on implementation of legal aid schemes

There are number of precedents as well as legislations to up hold the right to free legal aid but they are rendered useless due to their ineffective implementation. Thus focus should be now shifted on to effective and proper implementation of the laws which are already in place instead of passing new legislations to make legal aid in the country a reality.

Increased participation of law students and law school legal aid clinics

A welcome step in the direction of providing more free legal aid can be by making it mandatory for all law schools to have proper functioning legal aid clinics that can help the needy. This will fulfil a twofold purpose. Firstly, more people from the legal fraternity will be available to provide assistance to the needy. Secondly, law students will get practical exposure to resolving disputes in real life scenarios.

Clinical legal education is mandatory in a number of law schools all over the country but there is no proper mechanism to ensure that the legal aid clinics are doing any real work in the field. There is need to ensure that the students are given an opportunity to be of help to the poor and the needy during their education.

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[44] International Pro Bono Resource Centre, About Pro Bono — Pro Bono Provisions in Government Tender Arrangements for Legal Services, *available at* http://www.nationalprobono.org.au (last visited on June 14, 2016).

[45] Andrew Higgins, *Legal aid and access to justice in England and India*, 26 *NLSI Rev* 13 (2014).

[46] *Ibid.*

Concluding Remarks

The concept of legal aid is neither new nor complex. All of us are all very well versed with the term “legal aid” which clearly connotes that it is related to providing aid in the legal field. It is one term that is provided by our Constitution itself and has been emphasised on by our courts time and again. But as citizens of this country, how well versed are we with the basics of legal aid? Do we really fulfil our duty of providing it to people in need? Is the State doing enough to uphold the philosophy and principles envisaged by our forefathers in the Constitution? The uncomfortable truth is that even after decades of legal aid legislations, these questions still remain unanswered. The free legal aid schemes are dangerously close to meeting the fate alike to that of the anti-poverty programs, which are launched with much enthusiasm but barely yield any real results.

The legislations are plenty in number and the intent with which they were enacted were indeed noble. But the truth of the matter is, that despite all these efforts, the lack of focused implementation has managed to defeat the purpose. In addition, there are no clear and in depth studies that validate that legal aid has reached the targeted groups. This results in creating a vacuum where the impact of legal aid schemes cannot be measured in realistic terms. Thus, the biggest challenge that we face today is to try to ascertain the possible impact and ramifications of legal aid schemes and how to counter these to ensure that these noble schemes reach the right people at the right time. The research study referred to in this paper further solidifies the hypothesis that the legal system in the country is far more ineffective than imagined and this adversely affects the poor and the hapless the most.