

**Access to Justice and Legal Aid Services with special reference to specific
Justice needs of the underprivileged people**

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‘Access to Justice’ is a basic human right conferred by the common law and exists unless it is taken away under any valid exercise of statutory or constitutional power by the legislature.

In England, during the reign of Henry II, in the Twelfth Century, the concepts of ‘access to justice’ and ‘rule of law’ took roots when the King agreed for establishing a system of writs that would enable litigants of all classes to avail themselves of the King’s justice. But soon, the abuses of ‘King’s Justice’ by King John, prompted the rebellion in 1215 that led to the Magna Carta which became the initial source of British constitutionalism. What it represented then and now is a social commitment to the Rule of Law and a promise that even the King is not above the law.

The word “access” in itself signifies a Right to move towards Remedy. This is not a modern concept but is by and large reflective of the primeval principle of Roman law “*ubi jus ibi remedium*” i.e. where there is a Right, there is a Remedy. Access then is the exercise of this Right to get ones due. Another word, which then is supplanted to the word Access, is “Justice” which can at best be surmised as a phenomenon which no one has seen, but everyone has felt the presence, or the lack of it. Jurists have propounded theories, castigated and rebutted each other’s dictums, but have not yet been able to arrive at the consensus of what exactly are the contours of the word “Justice”.

However, a common understanding of this word is read as being synonymous with Right. Whatever is Right is just, and vice versa. A king has to be righteous, for if he discharges his duties to the best of his abilities, then he is just. As a corollary, a person who is unlawful, and has

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no regard for civilized conduct is unjust. His actions are unjustified and he will have to account for all the wrong that he has done to people. This psychological expectation from the State is embedded within each denizen to punish every person who is at the wrong pedestal, and to bring him to Justice, is what they are indoctrinated into. To them, the State is the supreme custodian of their rights, and whenever the sanctity of this right is threatened, it is the duty of the state to intervene and restore normalcy. It is entirely in this light that the theory of justice found its origin.

However, the modern conception of Justice is not the one that was propounded by the Natural Law School theorists, nor was it crystallized from the aphorisms of the Positivists, but the modern notion was a milieu of sociological jurisprudence with a tinge of critical legal thought. With specific reference to India, this means that access to justice was not about bringing the culprits to the books, but it extended far beyond by imposing a positive duty onto the State to restore it all that was its due.

The builder of Modern India, Jawaharlal Nehru was a crusader, when it came to the inclusion of the Fundamental Rights which were embodied from the American Constitution. Furthermore, it was not sufficient that the individual's rights have been assorted into Part III of the Constitution, there very enforceability was endowed into the hands of the Apex Tribunals of the country as the guardian Templars of the Holy Cross which was manifested in the form of Article 32 and 226 of the Constitution. It was however found insufficient, and therefore a categorical observation was made that in order to live up to the expectations of the citizens of this country, it was quintessential that the role of the State was to find its guidance from the very Constitution. It was in this light that the Directive Principles of State Policy were incorporated from the Irish Constitution which mandated the role of the state, but owing to the severe resource deficit that the independent India faced, and the towering and colossal task of nation building that lay ahead, it was decided that these guidelines should not be mandatory, but should express in its entirety the intention of the Constitution framers. The Directive Principles of State Policy were therefore kept Unjusticiable, i.e. they could not be enforced in the Court of Law.

However, even after sixty five years of Independence, when the country still is representative of an India within an India, one which is progressing at a rapid double digit growth rate, in stark contrast to another which also houses the largest Below Poverty Line population of the world, both in terms of percentage as well as in absolute terms, it is but obvious that the Access to Justice is yet a distant dream to be achieved. With specific reference to the underprivileged sections of the society, there has been more than one reason to fret over:

- a. Poor Implementation of Strategies
- b. Heavy Dependence on Erratic Monsoon, with no back up plans.
- c. Exploitation at the hands of the Have's.
- d. Stagnation or Rapid decrement of Resources.
- e. Focus on Immediate Relief rather than choosing Self Reliance.

There may be a host of contributing factors for this despicable situation; however what is also worth observing is that there is a strong sense of conditioning that has been a resultant vector of this continuous oppression.

Right to Access to Courts as a component of Access to Justice.

Access to Justice has been often read as being synonymous with Access to Courts. On more than one occasion, the Supreme Court has held that the expression under Article 21 includes the Right to access to courts of law, which is manifested in the form of the Extraordinary Writ Jurisdiction Power bestowed on the two courts. The Constitution recognised importance of access to justice to courts, particularly by resort to the High Courts and the Supreme Court. The right under Article 32 to petition the Supreme Court for enforcement and protection of fundamental rights is itself a fundamental right. In *Keshav Singh Re*¹, the Indian Supreme Court said “The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the court in that behalf.” *Kesavananda Bharti v. State of Kerala*² recognised judicial review as part of the basic structure of the Constitution, a position that has been reaffirmed by a bench of seven judges in *L. Chandra Kumar v. Union of India*³. That would mean that not even the amendment of the Constitution can take away the power of judicial

¹ AIR 1965 SC 745.

² 1973 (4) SCC 225.

³ (1997) 3 SCC 261.

review vesting in the High Courts and Supreme Court. Any amendment taking away any part of the right to judicial review will be unconstitutional and can be struck down by the Constitutional Courts.

Right to Free Legal Aid as a component of Access to Justice.

The Right to Free Legal Aid has been adumbrated under Article 39 A of the Constitution of India. However, in exercise of Judicial Activism which started from the *causa celebre* of *Hussainara Khatoon* and culminated into the inception of the National Legal Services Authority vide the Legal Services Authority Act of 1987 was the magnum opus of Judicial sympathy towards the plight of the masses. Prior to the inception of this Act, Justice was a subject which existed in text books. Anybody who was well to do can pay and have himself represented. A poor, on the other hand would have to sell of the last dime that he saved in order to fight for his right, a right which was so sanctum to his very identity, that he was forced to bow down before the might of those who subverted and exploited the law to their own prejudice.

By providing for access to Justice to the poor and the marginalized, the setting up of The National Legal Services Authority under the aegis of Supreme Court Justices both former and present, has earmarked an era wherein and whereby Justice is delivered to People at their very own doorsteps.

Furthermore, the effect that the setting up of National, State and District Legal Services Committee has had on people, has been immense. The skeletal provisions enunciated in the Criminal Procedure Code and the Code of Civil Procedure was revived by flesh and blood as soon as the Seventies witnessed a great upsurge in the number of cases filed by the destitute, the poor, the impoverished and the seemingly grotesque under dogs of the society. It was a combination of the Legislative Will, the Judicial Activism and the Executive Commitment which forged an alliance to become the World's largest free legal Aid Service Provider.

Such a gigantic institutional change was not only specific to infrastructural changes, but was also contemplative of the stance taken by the Supreme Court in taking stringent steps to ensure that Justice is actually done, and not merely be seem to be done. Statistics from the National Crime Records Bureau suggest an alarming number of almost 85% of the total prisoners to be under

trials that have been incarcerated and are waiting for their fate to unfold on them. *Casus Classicus* such as *Rudul Shah or Sunil Batra v. Delhi Administration* brought in revolutionary changes in the manner in which under trial prisoners were to be kept. The guidelines that were formulated by the Apex Court were in accordance with the International Treaties and other covenants on the right to the protection of Right and Dignity of the Under Trials and the Prisoners.

Furthermore, the Supreme Court by virtue of its Herculean power of Interpretation paved way for those who have been subjected to deplorable treatment by giving them a sigh of relief. It was held in the *Causa Celebre of Delhi Development Working Womens Forum v. Union of India* wherein the Supreme Court provided for the setting up of a Criminal Injuries Compensation Board (C.I.C.B.) so as to ensure that the four tribal ladies who were raped were compensated for the loss to their dignity. Furthermore, it was in this very case that the Supreme Court took a proactive stance and impleaded the National Commission of Women thereby castigating of their laxity in not taking up the matter before themselves, and holding that the NCW was not merely a recommending body, but had the power to enforce its recommendations.

It was according to such momentous decisions that people's faith in the Legal System is still intact. However, the right to legal aid in India is now firmly entrenched in the Legal Services Authorities Act, 1987. S.12 of that Act provides that legal aid will be available both on the means test as well as the merits test. In fact, for a wide range of litigants with special needs, for instance, persons in custody, children, women, complainants under the SC/ ST Act, workmen, legal aid is automatically available for filing or defending a case irrespective of the economic status of that person. We have, under the Act, an extensive network of legal aid committees at the taluk, district and State levels. In addition, every High Court and the Supreme Court has its own legal services committee. The task before these committees to provide effective and quality legal aid, that will not be restricted to legal representation in courts but also counseling an advice, is an important and daunting challenge.

Public Interest Litigation as a Component of Access to Justice for the Marginalized

The concepts of 'public interest litigation' have come to stay in our Constitutional Courts. The use of this potent weapon has been extended to every public spirited citizen who has been aggrieved of the wrong being perpetrated to bring it to the cognizance of the Court. To that

effect, even a letter addressed to the Chief Justice of the High Court or the Supreme Court will be entertained as a Public Interest Litigation. The trend of bringing public interest litigation in the Supreme Court and in the various High Courts by social action groups, the legal aid societies, university teachers, advocates, voluntary organizations and public-spirited citizens has risen in the country. This has helped to ameliorate the miseries of thousands of persons, arising from repression, governmental omissions or excesses, administrative lethargy or arbitrariness or the non-enforcement of beneficial legislation. Cases of under trials as well convicted prisoners, women in protective homes, unorganized labourers, untouchables, miseries of scheduled castes and tribes, landless agricultural labourers, slum-dwellers etc. are taken up in PIL cases. The concepts of locus standi have been very much expanded to meet the problems created by damage to environment or environmental pollution. Public interest cases have also come to be filed seeking directions against the Police or State for taking action against corrupt individuals. The result is that the strict rules of 'locus standi' which were applicable in the writ jurisdiction of our Constitutional Courts have, practically vanished. A most prominent example is that of *M.C. Mehta v. Union of India* whereby hosts of Factories which were posing a serious risk to the Yamuna had to either relocate or were asked to shut down. Furthermore, in the case of *Olga Telis*, the right to slum dwellers was upheld by the Supreme Court by stating that the Right to Shelter forms an integral part of the Right to Life with Dignity, and it is the right to a dignified Life which has to be restored and upheld by the Courts in this Country.

In its essence, the pronouncement of the Supreme Court was explicitly surmised in the case of *Bihar Legal Support Society v. The Chief Justice of India & Ors.*⁴ in the following words:

“The weaker sections of Indian society have been deprived of justice for long long years; they have had no access to justice on account of their poverty, ignorance and illiteracy.The majority of the people of our country are subjected to this denial of 'access to justice' and overtaken by despair and helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for perpetuation of domination over large masses of human beings..... The strategy of public interest litigation has been evolved by this Court with a view to bringing justice within the easy reach of the poor and disadvantaged sections of the community.”

⁴ AIR 1987 SC 38.

Legal Aid as a major component in providing Access to Justice

Legal Aid is not merely a subject of academic discourse; it is a social value, an underpinning commitment of the Welfare state of Nehru, a quintessential component of the Constitution, and above all, the most potent weapon to ameliorate the plight of the indigents. Lord Denning while observing that Legal Aid is a system of government funding for those who cannot afford to pay for advice, assistance and representation said: “The greatest revolution in the law since the post-second World has been the evolution of the mechanism of the system for legal aid. It means that in many cases the lawyers’ fees and expenses are paid for by the state: and not by the party concerned. It is a subject of such importance that I venture to look at the law about costs-as it was-as such it is-and as it should be.”⁵

With regard to the very inception of Legal Aid as being recognized as the primordial right of every denizen, reliance can be placed on the very tenets of the Magna Carta which was formulated well over seven centuries ago, the beginnings of equal justice under the law were marked by the inscription in the 40th paragraph of the Charter in the following words:

“To no one will we sell, to no one will we deny or delay right or justice.”

To evolve at an all-encompassing and pan inclusive definition of Legal Aid is a major problem, as the problems for which legal services are required for are numerous. An attempt, however, has been made by way of Section 2(1)(c) of the Legal Services Authority Act, 1987 which stipulates that “Legal Service” includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter; To provide free and competent legal services to the weaker section of the society was the basic object of enacting the aforesaid Act. Justice - social, economic and political, is our constitutional pledge enshrined in the preamble of our Constitution. The incorporation of Article 39-A in the Directive Principles of State Policy in the year 1976, enjoined upon the State to ensure justice on the basis of equal opportunity by providing free legal aid.

For long there has been a misconception that Legal Aid is not a right in its true sense as it is incorporated under Article 39 – A thereby being a Directive Principle of State Policy and not

⁵ What Next in the Law: Lord Denning, London Butterworths, 1982.

being part of the Fundamental Right. However, the position of law is now well settled that the Right to Representation as well as the Right to speedy trial has been recognized as being part of the very Right to Life and Liberty and is therefore of paramount significance. It is therefore the duty of the court in order to facilitate, promote and ensure that this right is preserved at all levels and that its sanctity is to be accorded from the very Preamble of the Constitution. Expeditious relief entails that the right is to be made available to every pauper, indigent, impecunious and destitute. Hence, legal aid is not a charity or bounty, but is a constitutional obligation of the state and right of the citizens. The problems of human law and justice, guided by the constitutional goals to the solution of disparities, agonies, despairs, and handicaps of the weaker, yet larger brackets of Bharat's humanity⁶ is the prime object of the dogma of "equal justice for all". Thus, legal aid strives to ensure that the constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the downtrodden and weaker sections of the society.⁷

Justice Krishna Iyer regards it as a catalyst which would enable the aggrieved masses to re-assert state responsibility, whereas Justice P.N. Bhagwati simply calls it "equal justice in action". But, again the constitution not being a mystic parchment but a Pragmatic package of mandates, we have to decode its articles in the context of Indian life's tearful realities⁸ and it is here when the judiciary has to take center stage. The judicature, which by its creative interpretations has given an encyclopedic meaning to the concept of legal aid. Time and again it has been reiterated by our courts that legal aid may be treated as a part of right created under Article 21 and also under Article 14 and Article 22(1).⁹ The apex court has held access to justice as a human right.[6]thus, imparting life and meaning to law.

In his vision statement on Second Generation Reforms in Legal Education, as rendered by the Hon'ble Law Minister for the Government of India, a threefold policy of *Expansion, Inclusion and Excellence* was underscored and conceptualized.

⁶ Report on National Juridicare: equal justice – social justice, 1977, Government of India.

⁷ Chopra R C, Legal Aid Movement in India-Its Development and Present Status, <http://causelists.nic.in/nalsa/>

⁸ Report on National Juridicare: equal justice – social justice, 1977, Government of India

⁹ *Hussainara v. Home Secretary, State of Bihar*, AIR 1979 SC 1377., *Khatri v. State of Bihar*, AIR 1981 SC 928, *Suk Das v. Union Territory of Arunachal Pradesh*, AIR 1986 SC 99, *Kishore v. State of Himanchal Pradesh*, AIR 1990 SC 2140.

- a. *Expansion* will focus on a multi-disciplinary approach encouraged across the board to enable more students to access affordable and quality legal education. An efficient justice system plays a vital role in our economic development – reducing pendency’s alone can add about 2% to our GDP – and it is our legal education system that will provide the manpower to fuel this required efficiency.
- b. *Inclusion* will focus on creating a system by which a first generation lawyer from a backward and poverty stricken class can rub shoulders with the best of the best at the national level by way of establishment of a National Law Library that can also be accessed by all citizens online.
- c. *Excellence* will focus on identifying and nurturing talent by providing every opportunity to every individual wishing to be a student of law: An opportunity for students to specialize in various aspects of the law during their education itself in order to create a pool of talent based on domain expertise and core competence. A continuous focus on social responsibility and a strong professional ethic during every step of the educational process – every practitioner should have an unfailing commitment to the integrity and working of the legal system – reinvigorate the oversight mechanism for professional misconduct in order for it to take swift action, including debarring those that violate professional ethics and standards of the profession.

The Law Commission of India in its 184th Report has elucidated and underscored the need for drastic remedial steps to be taken in order to bring transformation in the way Legal Education has been perceived and implemented, including revamping changes to the core structure of implementation in Legal Education. It was also for the very first time that it was realized that a mere declaration to that effect will not suffice, what was needed was also a series of concerted actions taken by The Bench, the Bar, the Legal Academia and the Legislators in order to do their part to instill and inculcate the spirit of Social Engineering into the next Generation of Lawyers.

Challenges to The Access to Justice in India.

A very pertinent and pragmatic observation would suggest that India, being a participatory democracy suffers both from the virtues and vices of public participation. Those which frequently have been termed as prioritized challenges are those that are aimed at infrastructural difficulties, problems of implementation, and above all a major sample size to cater to the needs

of everyone. Furthermore, the cliché problems of docket explosion, less judges to litigant's ratio are among other features which are here to stay. What is therefore necessary is to arrive at a step by step solution to the problem in question. However, there are other very significant issues, which are in addition to the problems already summarized above.

As a result of social and economic conditions in India, pro bono representation of indigent clients is regarded as part of the social responsibility of the legal profession: "The professional obligation of the Bar behooves it to help the poor in a country of poverty."¹⁰ The Expert Committee on Legal Aid rightly observed that "access to the Courts would be illusory unless representation of the under-privileged by counsel is recognized as a professional mandate."¹¹ The Expert Committee, therefore, recommended in 1973 that the privilege of representing a client before judicial tribunals to the exclusion of all others must carry with it a binding obligation to appear in cases of legal aid.

In United States, the rules pertaining to *pro bono verito* services has been recognized as a non-mandatory obligation, amongst the lawyers, vide Rule 6.1 which declares that every lawyer has a professional responsibility to provide legal services to those unable to pay, but this responsibility is only aspirational not legally binding. It then states that "[a] lawyer should aspire to render at least (50) hours of *pro bono publico* legal services per year," and in fulfilling this responsibility should provide legal services at no fee or a substantially reduced fee to any of a wide variety of recipients, including persons of limited means, or should participate in activities for improving the law, the legal system, or the legal profession.¹²

In one of the articles penned by Mr. Bloch and Mr. Iqbal Ishar¹³, it has been espoused by the learned authors that the nature of obligation that has been imposed on the lawyers practicing in India is purely moral as per the Bar Council of India rules continue to require the members of the profession only to bear in mind in the practice of law that "within the limits of an advocate's

¹⁰ V.R.K. Iyer, *Social Mission Of Law* 131 (1976). See Also V.R.K. Iyer, *Law, Society And Collective Consciousness* 68, 86 (1982); Menon, *Lawyer In The Adjudicative Process.* "An Appraisal Of Section 30 Of Advocates Act, 1961, 8 J.B. Council Of India 105, 107(1981); Anand, *General Principles Of Legal Ethics* 204-05 (1965).

¹¹ *Supra* Note 51.

¹² The comment to ABA Model Rule 6.1 says that "States, however, may decide to choose a higher or lower number of hours of annual pro bono service." MODEL RULES OF PROF'L CONDUCT R. 6.1. The New York version of Rule 6.1 includes the following: "Every lawyer should aspire to: (1) provide at least 20 hours of pro bono each year to poor persons; and (2) contribute financially to organizations that provide legal services to poor persons." N.Y. RULES OF PROF'L CONDUCT § 1200.45(d) (2010) (emphasis added).

¹³ *Legal Aid, Public Service And Clinical Legal Education: Future Directions From India And The United States*, [Vol. 12:92] *Michigan Law Review*.

economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society."¹⁴ This obligation of advocates to render legal aid is only moral, and, in the absence of machinery put in place by which an advocate could be made to discharge this obligation, it is easily possible for advocates who are so minded to evade their pro bono obligations. More conscientious members of the profession have been providing assistance and representation on a purely voluntary basis to clients with limited or no means, often without assignment by any legal aid organization. However, these individual efforts are said to suffer from an air of charity, and the legal profession as a whole has been castigated for not undertaking a public legal aid and advice program in an organized manner".¹⁵

The author is unable to take this argument in its entirety for the BCI Regulations have been designed on a pragmatic basis. Should proper incentives for cases pertaining to Legal Aid matters were to be adopted there would be a competent representation of clients. In India, there are three categories of lawyers at all levels which deal with cases pertaining to Legal Aid matters. The first category belongs to those lawyers who take up such cases as part of their social responsibility, and promise to give adequate representation to their clients who are usually indigents. These lawyers have a very good practice, and do so as part of their community responsibility. However, there have been instances during the work being carried out in Tihar Jail Complex wherein the poor indigents who are incarcerated hold visiting cards of some very influential lawyers, however they have not seen their clients for the past four years, to quantify the least, leaving the destitute to linger on the faint light of hope.

The second category of lawyers who take up such matters are those whose practice is not able to earn them a proper living, the idea therefore is to thrive on the remuneration paid by the Legal Services Authority and earn it on a case to case basis. Discrediting the very argument of their competency, the sheer number of cases undertaken by them becomes so huge, that redressal of their clients apathy, and the very notion of his adequate representation falls into grave jeopardy.

The last class of lawyers is comprised of those who actually work for the benefit of the client and to secure to him the values that have been pithily surmised in the constitution, a right

¹⁴ Rule 39.B of the Bar Council of India, under authority of the Indian Advocates Act,1961 (quoted in the Expert Committee Report, supra note 8, at 176).

¹⁵ Desai, Role And Structure Of Legal Profession, 8 J.B. Council Of India 112 (1981); V.R.K. Iyer, Law Versus Justice 167 (1981).

to which he has proprietorship is denied to him by all quarters. Needless to admit any argument that such lawyers are very few in number, owing to the insurmountable number of litigants that cluster around the doorsteps to justice. If a change has to be made then it has to be such so that adequate incentives are provided for cases in which Legal Aid is looked upon as the obligation of the State. Under Regulation 8(9) of NALSA (Free and Competent Legal Services) Regulation, 2010 the amount stipulated payable per month to Lawyers who are called Retainer Lawyers or solely committed to the cause of fighting Legal Aid cases, is a mere sum of Rs. 5000 p.m. for District Legal Services, Rs. 7500 p.m. for State Legal Services, and Rs. 10,000 p.m. for Supreme Court Legal Services.¹⁶ This amount is payable to those lawyers who are exclusively empanelled for the purposes of Legal Aid Work and due to the over burden of cases have to deal with those cases solely. There is an urgent requirement of incentivizing legal aid work and to promote it amongst those lawyers who refrain from entering into this noble domain due to financial constrictions.

Recognition of the Instrumental Role to be played by the Law Schools in India.

Hundreds of thousands of low-income clients have been well served by clinic students. Although this magnitude of assistance is very low compared to the need of indigent people for legal services, in most cases the value of the service to clients has been incomparable: avoiding homelessness, avoiding or reducing time in prison, obtaining disability benefits, securing the right to remain in the United States, obtaining safety from a threatening spouse.¹⁷

They reflect a reality that many "elite" law faculties in the United States now have significant contingents of "impractical" scholars, who are "disdainful of the practice of law." This also holds true for Law Schools in India where the law schools have over emphasized on theoretical knowledge which is devoid of any practical application whatsoever. The "impractical" scholar produces abstract scholarship that has little relevance to concrete issues, or addresses concrete issues in a wholly theoretical manner.

Clinical courses expose students not only to lawyering skills but also the essential values of the legal profession: provision of competent representation; promotion of justice, fairness, and

¹⁶ Vide Regulation 8(9) of NALSA (Free and Competent Legal Services) Regulation, 2010.

¹⁷ Philip G. Schrag & Michael Meltsner, Reflections on Clinical Legal Education 5 (1998).

morality; continuing improvement of the profession; and professional self-development.¹⁸ These professional values are taught and at the same time thousands of clients receive access to justice through clinical programs. In this way, clinical programs meld legal theory with lawyering skills, and students learn lawyering values by providing legal assistance to clients who would otherwise lack access to justice. The goal of educating students to this responsibility for assuring access to justice is best met if such education permeates the curriculum. Each law school course should raise issues of access to justice, with clinical courses exposing students to the reality of how these issues play out in the lives of indigent clients and the systems currently used to address their needs. If law schools are truly committed to professional values, then these values must be discussed in every class and not simply relegated to clinical courses. The biggest misconception till date is that Clinical Legal Education or Pro Bono Verito Services is a subject of academic importance only. What legal luminaries fail to observe is that it is not a subject during the last years of a law school curriculum, but it is a value system that has to be ingrained into every single individual from the moment a fresher enters into a law school.

Little attention is paid to synthesis, either of bodies of substantive law or lawyering techniques that might help the student understand how the law lives and the lawyer's role in bringing it to life. Law schools generally do not do a good job of teaching students how to gather and digest facts that are not neatly packaged; identify the range of solutions, legal and non-legal, that might apply; determine what the limitations of a given forum might be and determine how best to work within that forum; counsel a client; and negotiate with an opponent.¹⁹

It is therefore significant to provide for an all-inclusive model of education which is based on social values and which is reflective of the term “Social Engineer”. The humungous role that can be played by law students in this regard has been exhibited by a few National Law Universities. The pioneering work of the Legal Aid Committee of the NLU Delhi made use of Section 32 of the Advocates Act to appear before the Court of Law and secured release of over 10 prisoners incarcerated in the prisons across India. Another significant contribution has been made by the National University of Juridical Sciences which has commenced its project called Shadhinota

¹⁸ American Bar Association Section on Legal Education and Admissions to the Bar, Legal Education and Professional Development - An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 207-21 (1992).

¹⁹ David A. Binder & Susan C. Price, Legal Interviewing and Counseling: A Client-Centered Approach (1977).

which is aimed at integrating all the legal aid cells in the Country and to effectuate a corpus system of free legal aid services by law school students and teachers. It is to this effect that the role played by the law schools has to be given due consideration and recognition, as it will solve dual purpose, it would bring Justice to the doorsteps of the impoverished litigant, while enabling a student to learn and be the practical lawyer, well conversed with the intricacies of the system, and more importantly sensitized with the pain and agony of the pauper, who has to reel under tremendous emotional, physical and financial trauma to fight that one case of his life.

Furthermore, by taking part in the Alternative Methods of Dispute Resolution such as Mediation, Conciliation and Nyaya Panchayats, the students can ensure an expedient and speedy disposal of cases.

Most members of the Indian legal community - law teachers, the bar, the bench, legal aid experts agreed that law schools should play an active role in the country's fledgling legal aid movement, believing that isolation or exclusion of law schools from legal aid programs would be self-defeating for legal aid, legal education and the legal profession.²⁰ The time and expertise of law teachers as well as the motivated minds of enthusiastic and youthful law students were considered a national resource to be harnessed in the national interest to achieve the constitutional goal of equal justice for all.

Legal aid is a national necessity and a constitutional imperative in India;²¹ massive poverty and illiteracy make the task gigantic. The nature of legal aid programs has determined the shape and activity of law school clinics; the educational benefits of clinical activity are merged with, incidental to, and not more important than the mission of contributing to the national cause of legal aid service. Thus, the view is shared widely in India by political leaders, legal educators and many lawyers and judges that law students can and should take a leading role in providing legal aid and assistance to the poor.

²⁰ Resolutions Of The 12th All India Law Teachers Conference, 2 Delhi L. Rev. 291 (1973) (Resolution No. ii); Jethmalani, Objectives Of Legal Education, In Legal Education In India 52, 56-57 (S. Agrawala Ed. 1973) (The Views Of Mr. Jethmalani, The Then Chairman Of The Bar Council Of India); Expert Committee Report, Supra Note 8, At 155-64; Juridicare Report, Supra Note 8, At 66-74; Sangal, Legal Services Clinic: Director's Report, 1975-76, 4 & 5 Delhi L. Rev. 193, 195 N.2 (1975-76) [Hereinafter 1975-76 Delhi Report] (Statement Of The Then Prime Minister Of India While Inaugurating The Indian Council For Legal Aid And Advice In 1975 And The Resolution Of The 1975 National Seminar On Legal Aid And Advice).

²¹ Supra Note 28.

Solutions to the Challenges posed in Access to Justice.

It can be unequivocally contested that in order to ensure that access to justice is not a mere myth, or a semantic jargon, what needs to be done is a collaborative effort of the Bar, the Bench, the Legal Academia and the Law Students in order to promote facilitate and propagate the cause for clinical legal education, and legal aid work so that Justice can also be manifestly done. As Justice Holmes has surmised, what Law is to Lawyers, Legal Education is to Law Students. It is therefore very pertinent that there has to be a change in the way Legal Education is imparted. It is not only the role of the teachers to further this cause, but it also vests a great deal in students. Contrary to its western counterparts, Legal Education in India was not regarded as priciest of professions as the gestation period was long. With the advent of 21st century, this trend has reversed, where students choose law not as a matter of chance but as their very choice. However, much needs to be done.

Another point which is very pertinent to the ongoing debate is the attitude of Law Students who take up Pro Bono Legal Services. The students could be categorized into three denominations when it comes to opting for Legal Aid Programmes. Category A comprises of those students who wish to enter into corporate law jobs and therefore Legal Aid to them is futile, as it has no academic credentials attached to it. Category B comprises of those students who wish to take up Legal Aid Work because it earns them brownie points when applying for an LLM Degree in any of the Law Schools abroad, for due regard is paid to those students who have had some experience in such sectors, The final category is comprised of those students who are committed to the cause, and work for the betterment of the society rather than looking up to it as a means of upgrading their resume. However, another implicit quandary is that due opportunity is not given to the students who are willing to participate because of their seniority.

Students in first and second year of Five Year Programme rarely get a chance to participate in Legal Aid Activities, although they are inducted as members of the legal aid committee of their respective colleges.

In order to counter this problem, one has to see the very conception of what all is included within the ambit of Pro Bono Verito Services. *Pro Bono Verito Services* includes and is not restricted to Mediation, Conciliation, Negotiation, Client Counseling, Legal Drafting, Drafting for Policies, Prison Advocacy Programs, Legal Literacy, Legal Awareness, Organizing Legal Aid Camps,

Working with Civil Societies that provide for Legal Aid, Assisting Lawyers and Firms that take up Legal Aid Work, to name a few.

A proper segregation of work can be done with respect to pro bono verito work, whereby students in the first year can work on legal empowerment, capacity building of other individuals in rural, semi urban, and urban sectors by spreading legal awareness. Whereas other specialized category of work such as ADR and Client Counseling can be taken up by students of second and third year. In such a way, every student can actively participate in the way Pro Bono Work has to be accomplished. Furthermore, in addition to this division, stress should be given on including academic credit so that the students who take it up are incentivized.

Being Tech Savvy

Although it has been noted for some time now, the utility of the Internet for providing legal information - and as far as other possibilities are concerned - one only has to visit the web pages of a number of CLCs to realize that many of them contain little more than basic contact details. Such a trend is universal. The details that are mentioned in any of the cells be it the Website of the Apex Court, i.e. Supreme Court or the Nalsa or State Legal Service Authorities is only constrained to the names of the Honourable Members who are spear heading these offices and discharging the duties, and their permanent addresses, to which a poor indigent has no use. What is important is therefore, the mechanism which has to be provided for in the form of a flow chart, or any other method which is easy to comprehend and is bereft of unnecessary complications. The absence of comprehensive legal information on their websites probably arises due to resource constraints but, again, this is an area in which the law student could contribute. Most CLCs produce comprehensive pamphlets on common legal topics for their communities. Law students with combined IT degrees or with web design competencies could upload these publications on CLC websites with minimal ordeal.

In Indian perspective, the same trend has been noticed in all the established law schools that have developed their own E- Research Cells. However there is a two pronged complication. A litigant, assuming that he is computer literate, would not know how to browse through the University's individual Website Id and pick out relevant material that could help him build his case as he does not understand the finer intricacies of the subjects involved. A lawyer, on the other hand would not browse through individual research materials, as replete as they might be, on these individual websites, thereby heavily constricting the scope of his research. The problem therefore is not the

unavailability of research solutions, the problem is the unavailability of a common platform wherein all such solutions could be classified according to Subjects, which can either be searched just like a Google search engine or be a click and open feature.

As far as it regards the literate section of the society, features can be provided for by using Social Networking websites such as Drupal, YouTube, Facebook etc. so that a basic legal awareness could be carried out to them at their doorsteps. Social Networking Sites have proved to have catalyzed socio- politico – cultural revolutions that have shaken roots in countries like Syria, Egypt, Tunisia, Libya, Sudan, Greece, United States, Ukraine, and England to name a few. With estimates totaling over a Hundred Million internet users who belong to India by the end of 2011, with roughly 43.5 Million users accessing Facebook²², the prospective of Facebook and other social networking websites emerge as potent tools of information dissemination.²³

Major Tool in the Shape of Section 32 of the Advocates Act, 1961

To the extent of representing any of those persons that are specified in Section 12 of the Legal Services Act, 1987, section 32 of the Advocates Act, 1961 is of primordial significance for students who are willing to represent their clients in a court of law. The most important benefit that this section provides for is that it identifies any person who can represent in any case or matter, the only prerequisite being that such person has to take leave to appear from the Magistrate and upon his permission can he represent his client.²⁴

A pertinent instance of manifesting this right endowed in the hands of every student is the recent Tihar Advocacy Project which has been carried out by the Students of the National Law University, Delhi whereby bail is secured for all those incarcerated under trials who have been imprisoned for an offence for which they have already spent more than half period of the total maximum imprisonment term for which they have been accused of an offence. By invoking Section 436 – A of the Code of Criminal Procedure, 1973, upon the discretion of the Magistrate, without going into the merits of the case, if an under trial has spent more than half of the total imprisonment term for which he was accused of, he is bound to be released on bail with or without sureties.

²² Estimates taken from Internetworldstats.com, accessed on 21st February, 2012.

²³ Estimates taken from socialbaker.com, accessed on 21st February, 2012.

²⁴ Section 32 of the Advocates Act, 1961 Power of court to permit appearances in particular cases.- Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

However, what is also of significance is the limit to which this right can be extended. A ground breaking potent weapon that the Indian Judiciary had evolved was the inception of Public Interest Litigation in India that has liberalized the rule of *locus standi* to a considerable level. Under the banner of Public Interest (or Social Action) Litigation (PIL) and the enforcement of fundamental rights under the Constitution, the courts have sought to rebalance the distribution of legal resources, increase access to justice for the disadvantaged, and imbue formal legal guarantees with substantive and positive content. Originally aimed at combatting inhumane prison conditions²⁵ and the horrors of bonded labor,²⁶ public interest actions have now established the right to a speedy trial,²⁷ the right to legal aid,²⁸ the right to a livelihood,²⁹ a right against pollution,³⁰ a right to be protected from industrial hazards,³¹ and the right to human dignity.³²

Justice Krishna Iyer surmised this proposition in the following manner:

Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral, procedural shortcomings... Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker.³³

What is envisioned is an amalgam of this power that can be read with section 32 of the Advocates Act, whereby a student can act as a public spirited citizen, and therefore he shall not be restricted to putting up appearances only at the trial stage, he can also file writ petitions which

²⁵ *Sunil Batra v. Delhi Administration*, (1978) A.I.R. 1978 S.C. 1675, *Upendra Baxi v. State of Uttar Pradesh* (1983) 2 S.C.C. 308.

²⁶ *People's Union for Democratic Rights v. Union of India*, A.I.R. 1982 S.C. 1473; *Bandhua Mukti Morcha v. Union of India*, (1984) 3 S.C.C. 161; A.I.R. 1984 S.C. 802.

²⁷ *M.H. Hoskot v. State of Maharashtra*, (1978) 3 S.C.C. 544, A.I.R. 1978 S.C. 1548;

Hussainara Khatoon v. Home Secretary, State of Bihar, A.I.R. 1979 S.C. 1360; 1369; 1377.

²⁸ *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 4 S.C.C. 401; *Sheela Barse v. Union of India*, A.I.R. 1983 S.C. 378.

²⁹ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 S.C.C. 545.

³⁰ *Rural Litigation and Entitlement, Kendra, Dehradun v. State of Uttar Pradesh*, A.I.R. 1985 S.C. 652.

³¹ *M.C. Mehta v. Union of India*, (1986) 2 S.C.C. 176.

³² *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 2 S.C.R. 516

³³ *Mumbai Kangar Sabha v. Abdulbhai*, A.I.R. 1976 S.C. 1455.

shall be treated as PIL, wherein and whereby he can argue before the Hon'ble High Courts and the Supreme Court.

Law Firms participating in Pro Bono

Several large law firms have become signatories of the "Law Firm Pro Bono Challenge," an initiative launched by the American Bar Association (ABA) in 1993 and now operating under the aegis of the Pro Bono Institute located at Georgetown University's Law Center. The Challenge encourages law firms to demonstrate a commitment to pro bono by institutionalizing a policy that commits 3 to 5 percent of the firm's billable hours to pro bono causes.³⁴

In addition to these new firm roles and policies, virtually all state bar associations currently offer annual awards that recognize pro bono work, as do numerous individual law firms across the country (Rhode 2005). Many of these law firms tout the accomplishments of pro bono award winners on their Web sites and in national lawyer periodicals that rank and profile outstanding pro bono initiatives and achievements. Some states now require lawyers to report the number of pro bono hours they perform each year, while other state and national bar associations have increasingly urged lawyers to perform pro bono work. If the same trajectory can be followed in India, then Law Firms and not just lawyers can realize that they owe a responsibility to the people in India. It would further be an incentive for the law students who take up placements with such law firms.

Conclusion

What is therefore envisioned is a common platform whereby the law schools can help raise Legal Awareness in schools and colleges. Other students can also help in various legal aid programmes be it client counseling, mediation, negotiation, prison reforms, legal drafting, policy making, or assisting firms or lawyers in their pro bono verito matters. The endeavor is to bring together all the flag bearers of Legal Insignia to move towards a collaborative cohesive unison so that justice may be secured those who dream of it.

The framework should strive to achieve the following three A's.

³⁴ Robert Granfield, The Meaning of Pro Bono: Institutional Variations in Professional Obligations among Lawyers, *Law & Society Review*, Volume 41, Number 1 (2007).

Awareness: Empowering people by letting them become aware of their rights and powers and the way to secure those rights to themselves.

Assertion: Assist and facilitate those people to assert those Rights as a matter of “Right” rather than a conferment or a bestowal of some benefaction.

Adequate Arrangements: Once Objective 1 and 2 are secured, the State shall make adequate arrangements so that these rights are rightfully given to those who assert them.

Let Access to Justice not be an experiment for a law school to try its hands on, let it be a full fledged realization of every law school to do its part for the betterment of our country, let it be a motivating force for every student to strive and live upto the ethos of Justice for all, let it be a calling for every lawyer to facilitate and promote the young legal minds by their able guidance so that the very tenets of professional ethics and civic responsibility are not constricted to a mere rule book.
