

Bar & Legal Aid in India

By

Justice Ved Prakash

Chairperson

Law Commission of Madhya Pradesh

JUSTICE SYSTEM, BAR & ACCESS TO JUSTICE:

- Law is a **tool of social engineering**.-Dean Roscoe Pound.
- That way, lawyers are supposed to play the role of **social engineers**.
- **Twenty-five of the fifty-six men** who signed the Declaration of American Independence were **lawyers**.
- Role of lawyers in securing **independence for our country** is well known.
- Lawyers play a crucial role in providing **access to justice** because our **justice system is designed by and for lawyers**, and those lacking support of lawyers may find it difficult to navigate.

JUSTICE SYSTEM, BAR AND ACCESS TO JUSTICE: THE RELATIONSHIP:

- In the words of **Krishna Iyer J.** -“Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon **professional expertise**; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. .(**Justice Krishna Iyer in M.H. Hoskot vs. State Of Maharashtra AIR 1978 SC 1548**)
- "What does it profit a **poor and ignorant man** that he is equal to his strong antagonist before the law if there is no one to inform him **what the law is** ? or that the courts are open to him on the same terms as to all other persons when he has not the wherewithal to pay the admission fee ?" (**American jurist, Prof. Vance of Yale** quoted in **M.H. Hoskot vs. State Of Maharashtra AIR 1978 SC 1548**)

ACCESS TO JUSTICE ABA DECLARATION, 2008:

- Access to justice is foundation of realising all other constitutional & legal rights . The dream of justice for poor and disadvantage cannot become a reality **unless lawyers as a professional community** come forward to play a proactive role in helping them to have access to justice.
- **ACCESS TO JUSTICE – A HUMAN RIGHT :**
Pro Bono declaration, 2008 of the **International Bar Association** proclaims ‘that access to justice is essential to liberty, fairness, dignity, progress, development and the Rule of Law’ and ‘that access to justice for all individuals is a **human right**’.

"PRO BONO PUBLICO" : MEANING AND CONCEPT:

- Here comes the aspect of rendering **"Pro bono publico"** services by lawyers.
 - **"Pro bono publico"** is a Latin phrase which in the context of the legal profession means **"for the good of the people,"** and it refers to legal services rendered free of charge or at reduced fees for the public good.

ACCESS TO JUSTICE :ROLE OF BAR SOCIAL PERSPECTIVE :

- **“...a clear part of the contact between the state and the legal profession is that it can have a monopoly only if it assumes some moral obligation for ensuring that legal representation is reasonably available to all. Without such a responsibility, the profession would be a crude cartel that existed simply to limit the supply of legal services, inflate prices, and create market dislocations....” Professor Allan Hutchinson (A Legal Theorist Of International Repute , Canada)**

ACCESS TO JUSTICE :ROLE OF BAR

HISTORICAL PERSPECTIVE :

- **Historian (USA) James A. Brundage** says that, “ medieval lawyers regarded it as one mark of their superiority to other craftsmen that they furnished their specialized skills to economically and socially disadvantaged persons without compensation. Providing the benefits of expert skill and knowledge for those to whom a profit economy would deny them was from the beginning an integral characteristic of professional status.”

ACCESS TO JUSTICE :ROLE OF BAR

MORAL PERSPECTIVE :

- **Professional Monopoly & Professional obligation :**
Earl Cherniak, Q.C. (A Reputed Lawyer from Canada) says in his paper , “Professionalism at the Crossroads,” “...when we say law is a business, what we mean is that a law firm must be run like a business, but the practice of law is a profession, because if it is only a business, there is no justification for the monopoly that we have in the practice of law, and no reason to continue to call ourselves professionals.”

ACCESS TO JUSTICE : ROLE OF BAR NEED PERSPECTIVE :

- ... The absence of access to legal services, for whatever reason, creates a vacuum in the marketplace and, like nature, the marketplace abhors a vacuum. If the legal profession does not move to fill it, we can be certain that someone or something else will. ... Is it so difficult to see governments moving family law to some family services department of the government? Most provinces have moved to no-fault insurance.” **Justice J. C. Major, A Canadian Jurist And a Former Judge Of Supreme Court of Canada**

PROFESSIONAL IDEALS - ACCESS TO JUSTICE & LEGAL AID:

- “Governments and **professional associations of lawyers** shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to **assisting the poor and other disadvantaged persons** so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.” **Principle 4 of the UN Basic Principles on the Role of Lawyers, 1990.**

PROFESSIONAL IDEALS - ACCESS TO JUSTICE & LEGAL AID:

- **Realising** that the legal profession, given its **commitment to a fair and equitable legal system**, holds a unique and privileged position in matters of justice... **resolved to call upon** lawyers, law firms and bar associations to provide pro bono legal service, which is work by a lawyer of a quality equal to that afforded to paying clients, without remuneration or expectation of remuneration, and principally to benefit poor, underprivileged or marginalized persons or communities or the organizations that assist them. **International Bar Association -Pro Bono Declaration, 2008:**

PROFESSIONAL IDEALS - ACCESS TO JUSTICE & LEGAL AID:

- Every lawyer has a **professional responsibility** to provide legal services to those unable to pay. A lawyer should aspire to render at least **(50) hours of pro bono publico legal services per year**. In fulfilling this responsibility, the lawyer should: provide a substantial majority of the **(50) hours of legal services** without fee or expectation of fee to (i) persons of limited means or(ii) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means.

**AMERICAN BAR ASSOCIATION MODEL RULES
OF PROFESSIONAL CONDUCT FOR LAWYERS
Rule 6.1 (1993).**

PROFESSIONAL IDEALS - ACCESS TO JUSTICE & LEGAL AID:

- “Every advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an Advocate’s economic condition, **free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society.**”

Rule 46 of the “Standards of Professional Conduct and Etiquette”, Bar Council of India Rules

ACCESS TO JUSTICE & LEGAL AID :THE CONSTITUTIONAL MANDATE

- Article 38 (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, **shall inform all the institutions** of the national life.
- Article 39-A “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...”

LAW COMMISSION OF INDIA ON ACCESS TO JUSTICE & ROLE OF BAR

- “The role of legal profession in administration of justice must be in consonance with the **intendment underlying article 39-A**. In other words in an adversary system as in vogue in law courts being the fulcrum of administration of justice , the role of legal profession must ensure equal opportunity to all litigants in search of Justice . In the process , opportunity for securing justice should not be denied to any citizen by reason of economic or other disabilities.....” (**Law Commission Of India 131 Report (1988)**)

THE APEX COURT OF ON ACCESS TO JUSTICE & ROLE OF LAWYERS:

- “Undoubtedly, the legal profession is the major component of the justice delivery system and has a significant role to play in upholding the rule of law. Significance of the profession is on account of **its role in providing access to justice** and assisting the citizens in securing their fundamental and other rights.....Success of administration of justice to a great extent depends on successful regulation of legal profession in the light of mandate under Article 39A for access to justice. **The S.C. in B. Sunitha vs. State of Telengana & Anr. (2018) 1 SC 638**

GAP BETWEEN PROFESSIONAL IDEALS AND PRACTICE :

- “India is acclaimed for achieving a flourishing constitutional order, an inventive and activist judiciary, aided by a proficient bar and supported by the State. The disadvantaged and poor are (still) deprived of access to justice because of the costs of litigation, both in terms of actual expenses and lost opportunities, and the laudable goal of securing justice - social, economic and political enshrined in the Preamble to the Constitution of India remains an illusion for them.” **New India Assurance Co. Ltd vs. Gopali & Ors. (2012) 12 SCC 198**

GAP BETWEEN PROFESSIONAL IDEALS AND PRACTICE :

- Facts and figures do speak that there is a wide gap as regards access to justice. Indeed the poor , the deprived and the marginalise are still suffering from injustice .[India's population is more than 133 crore, out of which around 28 percent i.e. 37 Crore are still living below poverty line .(Poverty : World Bank Report 2019).
- Around 31 crore Indians are still illiterate.
<https://www.orfonline.org/research/literacy-in-india>

legal Aid Bar's Obligation - Mandatory or Voluntary:

- Compelling the lawyers to render pro bono service may diminish the feeling that they are performing for altruistic reasons. A mandatory pro bono requirement **could erode commitment and discourage some individuals** from contributing above the prescribed minimum, while keeping it **voluntary** will generate the feeling of altruism and a **deeper moral commitment.**

BRIDGING THE GAP BETWEEN THEORY AND PRACTICE

- Impressing upon the lawyers about the value of the ideal of pro bono and that it is not only a philanthropic exercise but it is also a professional responsibility.
- Social recognition, social rewards and conferring with public honours upon pro bono activist lawyers .
- A lawyer who has no time for pro bono service may **buy out of their required service** by making a specified **financial contribution** to a legal aid program.
- The Topics relating to legal aid , pro bono, and access to justice to be made part of the course curriculum in law and the law students, being the lawyers of tomorrow , should be initiated in legal aid and access to justice programmes which will enrich their **understanding of how law relates to life of poor and disadvantaged.**

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THANKS