PROVIDING LEGAL AID: SOME UNTRIED MEANS

AID IS essentially attributed to means, or the lack of it. The logical justification for the ascertainment of the provision of legal aid in India was specifically "poverty" of the Indian masses.

Iyer J in *Maneka Gandhi* v. *UOI* observed thus:[1]

> In India, because of poverty and illiteracy, the people are unable to protect and defend their rights, observance of fundamental rights is not regarded as good politics and their transgression as bad politics.

The same sentiment was echoed in *Khatri* v. *State of Bihar*: [2]

> It is common knowledge that about 70 percent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law.

Poverty has well been recognized as a human rights issue. Law is one of the most significant means to eradicate poverty.[3] Therefore, if the internationally recognized human rights are fully implemented poverty can actually be countered and eradicated. A society based upon the recognition of human rights and respect for human rights should ideally attempt to converge the civil and political rights with the economic, social and cultural rights.[4] The principal international treaties in the field of human rights reinforce and support the notion that to eradicate poverty and to attain the capability to achieve a standard of living adequate for survival and development – including adequate nutrition, safe water and sanitation, shelter and housing, access to basic health and social services, and education – as

1. AIR 1978 SC 597 at 658.
2. AIR 1981 SC 928 at 931.
3. Oyen Else wrote in the Preface of the book *Law, Power and Poverty* by Kjonstad and Veit Wilson, 1997 as used in Genugted Willem Van and Perez-Bustillo Camilo, "Human Rights as a Source of Inspiration and an Instrument for the Eradication of Extreme Poverty – The Need for an Integrated Economic, Political and Legal Approach" in Genugted Willem Van and Perez-Bustillo Camilo (Ed.), *The Poverty Of Rights – Human Rights and the Eradication of Poverty* 184 (Zed Books, London and New York, 2001).
4. Genugted Willem Van et al, *id*. at 186.

a basic human right the governments have individual and collective obligations to respect, protect, and promote.[5] Human rights are, therefore, not only guarantees for mere survival; they are also endorsed as the instruments of development. Hence, article 14 of the International Covenant on Civil and Political Rights, 1966 guaranteeing right to receive legal aid is not only a civil right safeguard, it is also an indirect means to emancipate one's living standards. Provision for free legal services is an obligation of the state to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicate situation.[6]

Absence of meaningful free legal services to the poor would only propagate a sense of injustice amongst the poor and shatter the cherished constitutional and human right to equality.

The indigent and legal illiterates require legal services[7] for a wholesome development of the society. The financial stringency of the state cannot be an excuse to set off such claim of the indigent.[8] The shocking delay in the justice delivery system adds to the worry of an indigent, which is required to be addressed through the means of free legal services.[9] Observations of the apex court made during late 1970s still holds immense significance in Indian context even in the new century when the country has started being recognised as an upcoming economic power.

According to the VIth Five Year Plan, during 1979-80 (*i.e.*, when *M H Hoskot* and *Khatri* cases were decided) the extent of poverty in the country was 48.4 percent. In 1996, according to a study of the World Bank[10] the percentage of poverty was 38 percent. Further, according to another estimate during 1979-80 the total number of below poverty line (BPL) people was 31.68 crore, and in 2000 the number of such BPL people was 26 crores.[11] Thus, the requirement to have poverty alleviation programmes has not yet become redundant, and as has rightly been contended by Madhava Menon[12] 'legal aid' should form part of the poverty alleviation programmes of the government.

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5. *See generally,* Vizard Polly, *Poverty and Human Rights – Sen's Capability Perspective' Explored* (Oxford University Press, 2006).

6. *M.H. Hoskot* v. *State of Maharashtra*, (1978) 3 SCC 544.

7. *Ibid.*

8. See *Khatri, supra* note 2.

9. See generally *Hoskot*, *supra* note 6.

10. Study by Gaurav Dutt of the World Bank as used in Dwivedi Rishi Muni, *Poverty and Development Programmes in India* (New Century Publications, 2005).

11. Table on "Poverty in India during Various Periods*"* in Dwivedi Rishi Muni, *id.* at 32.

12. *See generally*, N R Madhava Menon, "Legal Aid And Justice For The Poor" in Baxi Upendra (Ed.), *Law and Poverty – Critical Essays* (Tripathi, 1988).

On the other hand, replying to a motion in Parliament recently, the law minister observed that in the subordinate courts there are 2.5 crore pending cases, which would take 300-400 years to be disposed off. The corresponding numbers for the high courts and the Supreme Court are 42 lakh and 38,000, respectively.[13]

Against this backdrop the significance of voluntary legal services becomes unquestionable in a democratic country based on the notion of social justice.

The roots

Before initiating a discussion on a new (or not so new) area, the existing regime requires to be carefully analysed. In this context the immediate task is to locate the right or provision to legal aid in the legal framework of the country and peep into its jurisprudential basis.

The law of the land guaranteeing 'social & economic justice' and 'equality of status and opportunity' emphatically provides for legal aid as part of the fundamental right under article 22(1) by declaring that no person shall be denied the right to consult, and to be defended by a legal practitioner of his choice.[14] Another constitutional utterance of significance that categorically talks of legal aid is article 39-A,[15] and a directive under part IV (*i.e.*, article 39-A) is fundamental in the governance of the country and it is the duty of the state to apply these principles in making laws.[16] Accordingly, since the judiciary is also a state,[17] it shall be the duty of the judiciary to apply the principle of "legal aid" in its decisions.[18] Thus, even in absence of a scheme of the executive government or a law enacted by the legislature, legal aid and legal service dictum is very much entrenched

13. "300 Years To Clear Justice Backlog", *The Telegraph*, Calcutta, 29.11.2006.

14. The sweeping coinage of the Article signifies that under all circumstances all persons should have right to consult and be defended by a legal practitioner of his choice.

15. "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."

16. Art. 37.

17. Mathew J in *Kesavananda Bharti* v. *State of Kerala*, AIR 1973 SC 1461; also Bhagwati J in *Sankalchand Seth*, AIR 1977 SC 2328. "[A] High Court Judge is the holder of a Constitutional Office, and not a Government Servant, but, 'he is as much part of the State as the Executive Government"' as quoted in A M Bhattacharjee, *Equality, Liberty and Property Under the Constitution of India* 118-20 (Eastern Law House, 1997).

18. A M Bhattacharjee, *ibid.*

in the Indian jurisprudence. But, the question, however, is the appropriate and pragmatic realisation of such guarantee in everyday life.

Section 304 of the CrPC, 1973 guarantees free legal services in case of sessions trials. Aid under section 304 is to be provided by the state government upon ascertainment[19] of the economic position of the accused, *i.e*., if he is unable to engage a pleader due to his economic status. The same section also talks of framing of rules by the high court (in consultation with the state government) on specificities of provision for legal aid to the indigent accused.

Aid in case of civil proceedings has been adduced by the exemption of court fees in favour of the poor appellants (in pursuance of order XLIV of the CPC). Further, the statement of objects and reasons of the amendment Act of 1976 (amending the CPC, 1908) declares that the purpose of the amendment is *inter alia* to ensure a fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.

These apart, effective implementation of the legal services and easy, hassle free realization of legal aid by the masses as a concern came to the fore when it stirred the conscience of the Supreme Court and evoked response of the apex grievance redressal fora.

In *M H Hoskot*[20] Iyer J asserted that the *Maneka Gandhi*[21] dictum of "fair legal procedure" is violated in absence of a statutory provision for free legal services that prohibits an indigent from being represented by a lawyer in the court of law. He further opines that free legal services to the indigent is an aspect of natural justice,[22] absence of which violates the principles of article 21 going by the interpretation given by *Maneka Gandhi*.[23] The activist judge further extends the scope of fair procedure to the availability of the services of a lawyer, which is to be ensured to all and

19. The court of session is to take proactive stand in this regard in ascertaining the economic condition of the accused.

20. *M H Hoskot*, *supra* note 6 in para 4.

21. *Maneka Gandhi*, *supra* note 1.

22. *M H Hoskot, supra* note 6 at paras 11, 12.

23. Bhattacharjee J, however, holds that it was not necessary to invoke the interplay between Arts. 14 and 21 as in *Maneka Gandhi* to ascertain legal aid doctrine in India; legal aid, according to him, is ensured in India through the interplay between Arts. 39-A, 22 (1) and Art. 37. He observes: ".... In declaring in *Hoskot* that legal aid should be made available to the accused in all Criminal Trials wherever the accused is not in a position to afford the same because of indigence or otherwise, it was not at all necessary to invoke Article 21 or Article 14 or to rely on the discovery in Maneka Gandhi of any principle of reasonableness as a brooding omnipresence in those Articles."

sundry even if that means expenditure from the government exchequer. It is an entitlement and consequently a government duty, not a charity.[24]

Iyer J successfully quotes Brennan J[25] to trace the jurisprudential basis of the right to legal aid. *Hoskot* drives home the "fundamental constitutional directive" of free legal aid under article 39-A and its actual realization through section 304 of the Cr PC. The essence of the case was the pragmatic effectuation of the legal aid doctrine to the indigent through the means of 'provision for lawyers' free of cost.

The apex court soon after *Hoskot*, again had the opportunity to address the issues of legal aid in the very next year in *Hussainara Khatoon*[26] and called for a nationwide legal service programme to provide free legal services to the poor and indigent. Taking cue from *Hoskot* (and *Maneka*), Bhagwati J reiterated that absence of legal representation would vitiate fair procedure doctrine under article 21. The judge categorically lay down that the state government is to provide lawyer to the indigent persons at its own cost. Consolidating and furthering the *Hoskot* observation, Bhagwati J pronounced the significance of the provision for a counsel, free of cost, to the people requiring such assistance, as the principal aspect of legal aid programmes.

To drive forth the proposition, Douglas J was quoted with success,[27] which is worth taking note of:

> The right to be heard would be, in many cases of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to

24. *M H Hoskot, supra* note 6 at paras 14, 24.

25. The judge quotes from the book of Justice Brennan – *Legal Aid and Legal Education* (para 15 of *M H Hoskot*): "Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness".

26. *Hussainara Khatoon* v. *State of Bihar,* AIR 1979 SC 1369.

27. Douglas J in *Jon Richard Argersinger* v. *Raymond Hamlin,* (1972) 407 U.S. 25: 32 L Ed. 2d 530.

> the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate or those of feeble intellect.

In *Khatri* v. *State of Bihar,*[28] Bhagwati J reiterated that free legal representation is one of the premier requirements of social justice, endeavoured by the Constitution. No state can avoid its responsibility to provide free legal services of a lawyer to an indigent person merely because of its financial constraints.[29]

By now, provision for free legal services of the lawyer and other facets of legal aid got deeply ingrained in the legal framework of the country. What was required was the formulation of appropriate policy and a planned systematic mechanism to effectuate legal aid principles in reality.

The schemes/programmes

In the pre-independence era voluntary organizations provided legal aid to the poor and indigent through public spirited lawyers. Legal aid societies were established in Bombay, West Bengal and Delhi, which mainly provided assistance of the lawyers free of cost (costs were borne by the societies).[30]

In the post-independence era, Kerala was the first state to formulate a policy on legal aid. In 1958 the Government of Kerala adopted the Kerala Legal Aid (to the Poor) Rules that extended assistance of the lawyer to the poor through the courts.[31] The Governments of Maharashtra and Tamil Nadu came up with such similar schemes during late 50s and early 60s that provided legal assistance to the scheduled castes, scheduled tribes and other backward classes of people and poor in civil and criminal cases.[32]

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28. *Supra* note 2.

29. *Khatri* incorporated some specific aspects into the legal aid jurisprudence of the country, viz.,

(i) legal aid from the date of the first production;

(ii) plea of financial constraints to avail legal aid is irrelevant; free legal services to the poor is a constitutional obligation and the State is to take necessary steps in this regard;

(iii) an accused is to be appraised of this right always.

30. See Menon, *supra* note 12.

31. *Id.* at 355.

32. *Id.* at 356.

The Government of Bombay instituted a Committee on Legal Aid and Advice in 1950 headed by Bhagwati J, which proposed voluntary legal services to be rendered by all lawyers, not only in criminal cases but also in civil cases. In the same year Sir Arthur Trevor Harris, a retired Chief Justice of the Calcutta High Court, put forth another scheme of legal aid. The Law Commission Report of 1958 referred to the recommendations of these two committees for legal aid entitlement.

Significant advancements with regard to legal aid programme formulation were made during 1970s. Two of the most prominent reports in this regard were the Report of the Expert Committee instituted by the Central Government in 1973 (under the Chairmanship of V R Krishna Iyer J) and the Report of the "National Juridicare: Equal Justice – Social Justice" in 1977 (a two men committee constitutive of P N Bhagwati and V R Krishna Iyer JJ).

The Expert Committee Report called for a comprehensive scheme on legal aid to be legislated by Parliament. It proposed the establishment of an independent and autonomous National Legal Services Authority to permanently espouse the cause of legal aid.

The committee foresaw legal aid cases to be dealt with by salaried lawyers, who are to appear regularly for legal aid cases. Availability of legal aid was proposed even in the pre-trial and post-conviction stages. But, in criminal cases, the committee was against the provision of legal aid for habitual offenders. In case of legal aid in civil cases, the report proposed amendment in orders XXXIII and XLIV of the Code of Civil Procedure to enable the courts to assign a lawyer to an indigent at state expenses.

A seminal proposal was laid down by the committee – it recommended the use of law students for legal aid activities. Significance of law students being used for legal aid is immense, especially for providing preventive legal services, *viz*. legal literacy and awareness, negotiation and conciliation, counseling etc. However, instead of limiting the recommendation of making use of law students only for preventive legal services, the expert committee went on further in proposing allowing law students to plead in courts in cases requiring legal aid.

The recommendations of the expert committee got consolidated through the Report of the National Juridicare: Equal Justice – Social Justice. Among other things the report observed: "The introduction of legal service clinics in law schools as part of curricular instruction in professional education is the natural answer to the vexed question of building up a cadre of poverty lawyers competent to run a nation-wide legal services programme."

The committee proposed amendment in the Advocates Act to allow senior law students to appear in court under supervision: [33]

> Even in India suitable provision can be made in the Advocates Act so that students of third year LL.B. class who are participating in the activities of the legal services clinic and who have been certified by the Dean or the Principal, shall be entitled to appear in any court or tribunal on behalf of a poor person, provided, of course, that such representation shall be under the supervision of lawyers associated with the legal services clinic and with the approval of the Judge in whose court the student appears.

This apart, the primary emphasis of the committee was to avoid litigation – conciliation and mediation were preferred instead of litigation. Conciliation through the *nyaya panchayats* and *lok nyayalayas* were recommended. The committee had also submitted a draft of the National Legal Services Bill, 1977 delineating the specificities of the legal services to be provided and the institutional set up for it, in keeping with the terms of reference to the committee.[34]

Finally the Legal Services Authorities Act came into existence in 1987. The legislation came into existence to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.[35]

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33. The National Juridicare Report proposed insertion of s. 37-A after s. 37 of the Advocates Act, 1961 to enable students to appear in legal aid cases:

S. 37-A: Legal Aid by Law Teachers and Students – Notwithstanding anything contained in the preceding section, the following categories of persons may appear in any court or tribunal on behalf of an indigent person, if the person on whose behalf an appearance is to be made has requested in writing to that effect:

(i) Teachers of a law school which provides full-time instruction for the professional LL.B. degree and which maintains a legal aid clinic as part of its teaching programme where poor persons receive legal aid, advice and related services:

(ii) Students of third year LL.B. class of law school as aforesaid who are participating in the clinics activities and who have been certified by the Dean/Principal of the law school under rules made therefor by the law school:

Provided that such representation in the case of students shall be under the supervision of lawyers associated with the said legal aid clinic and with the approval of the judge in whose court the student appears.

34. The terms of reference to the National Juridicare Committee *inter alia* sought recommendations for the establishment and operation of a comprehensive and dynamic legal service programme to effectively implement the socio-economic measures taken or to be taken by the government (that includes formulation of legal services schemes as well).

35. Preamble to the Legal Services Authorities Act, 1987.

In furtherance to the abovementioned purposes, authorities have been established under the Act at *taluka* (block/sub-district), district, state and central level to execute government funded programmes on legal aid. The Act through its decentralized hierarchical mechanism guaranteed structured and systematic implementation of free legal services.[36] Specific details of working of the legislation are being carried out by the different authorities under the Act through its rule-making power.

Legal aid programme in its generic meaning is no more limited to the assistance or services provided during the litigation. In its modern understanding (as is evident from the policy formulations of the different schemes) it includes the following aspects: "(a) representation by lawyer in civil, criminal and administrative proceedings; (b) educating the poor of their rights and entitlements under law; (c) organizing the poor and mobilizing voluntary social action groups to assert the rights and entitlements on behalf of the poor; (d) seeking reforms in the law to remove the disabilities of the poor and to provide affirmative state action to achieve effective equality; (e) monitoring welfare administration and making socio-legal surveys to highlight the problems of the poor for legal solution; (f) conducting public interest litigation and innovating new strategic tools for cheap, expeditious justice to classes of poor."[37] Thus, though the court oriented traditional method of provision of legal assistance is no more the sole aspect of legal aid, but, perhaps, it is still the most important aspect of any legal assistance scheme. It is through the representation in the court of law that the actual realization of the right to legal aid in securing the 'rights' of the indigent takes place. Realistically speaking, in a country like India where the greater chunk of the people is still 'not meaningfully educated' and who struggle to make the ends meet, the scope of preventive measures through awareness and education to secure civil and political rights is very limited. Under such circumstances it becomes immensely necessary to emphasise on the curative mechanisms of legal services. Hence, legal aid in and through courts should be well formulated and passionately executed.

Representation in court of law

In a recent deliberation on legal aid displeasure on the quality of services provided by the legal aid lawyers was expressed by the Supreme Court and high court judges.[38] They opined that it is unfortunate that though

36. *See generally* the Legal Services Authorities Act, 1987.

37. Menon, *supra* note 12 at 377.

38. "National Legal Colloquium for Review and Development of State Legal Aid Policy for Prisoners" 24th Sep 2006 organised by the National Legal Services Authority at the WB NUJS, Kolkata.

there is no dearth of lawyers willing to empanel themselves as 'legal aid lawyers', they pay very little or no attention to the cases referred to them by the Legal Services Authority. The best brains of the bar are, however, not much interested to appear in legal aid cases. Thus, in effect cases of the people who cannot afford a lawyer of their choice with full fees are argued by incompetent advocates allotted by the Legal Services Authority.[39] A few questions arise in this context: is the guarantee to legal aid meant to be kept in the confines of the letter of the law or the voluminous texts published on the subject? Would 'token implementation' of the guarantee to legal aid serve our intended purpose? Are we not making a mockery of the equality principle that forms the "golden-triangle" of individual freedom by providing incompetent representation to indigent litigants? The essence of representation through legal aid is the assurance (to the indigent) of being represented by a lawyer "of one's choice". The pragmatic significance of this guarantee is that the indigent should never be put in a disadvantaged position *vis-à-vis* the opposite party regarding representation in the court of law, *i.e*., she (the indigent) should never be represented by an incompetent lawyer. If this guarantee cannot be fulfilled, it would amount to punishing the indigent through the state's concerted action even before the hearing starts; the last nail of societal deprivation.

It is in this context something new is sought to be asserted to give the system a little facelift. The author would like to contend humbly but with conviction the use of senior law students as pleaders in the court of law for cases requiring legal aid services. The use of senior law students as advocates would not only serve the purposes of legal aid, it would also satisfy the requirements of the much needed clinical legal education for the students.

Here a reference to an assertion of a professor of law in the US (where student's law practice is allowed) would be of great relevance. Peter A Joy, a professor of law (who is involved with clinical teaching) at the Washington University observes:[40]

> The impact of clinical legal education in providing access to justice for those unable to afford lawyers has been significant in the United States. Thousands of law students taking in-house and externship clinical courses each year join the mere 5,000 to 6,000 lawyers working for organizations that represent the 45 million Americans

39. The Chief Justice of the Calcutta High Court, Sirpurkar J observed in lighter vein: 'The legal aid lawyers does not know "C" of the Criminal Procedure Code, "E" of the Evidence Act or "I" of the Indian Penal Code.'

40. Joy Peter A, "Law Students in Court: Providing Access to Justice", e Journal USA Issues of Democracy, *available at* http://usinfo.state.gov/journals/itdhr/0804/ijde/joy.htm —> (last visited 07/09/2006).

> who are so poor that they qualify for civil legal aid. In addition, other clinic law students help to provide criminal defense to those in need, and others in externships assist prosecutors and other government lawyers at the local, state, and federal levels.

If the difference that is made by the law students is of such immense nature, in Indian context it calls for an immediate implementation because of the crying need of the country's impoverished.

Allowing a student to plead in the court would signify immense amount of responsibility being entrusted on the student. This responsibility would make the student realize his importance and worth in the society. This realization in turn would satisfy the need of socially relevant legal education.[41]

In India, the lawyers receive a paltry sum to appear for the legal aid cases (most of the times it is less than Rs. 100 per hearing, depending upon the rules made by each of the states). Under such circumstances, if money is taken to be the motivating factor for providing legal aid to the indigent, it is quite evident that it terribly fails to do so (*i.e*. of motivating lawyers to appear for cases for less than Rs. 100 per hearing).[42] On the other hand, can we contemplate some other motivating factor apart from money,[43] or may be more important and significant than money. Let us look for the other substitutive motivating factors – 'a sense of making the difference', 'a sense of being a responsible and important entity of the society', 'being able to learn through real life situations', 'a sense of belongingness to the society', 'a sense of being able to help the downtrodden'. These are, however, not mutually exclusive factors; there is some amount of overlapping by one over the other. Neither should these be taken to be exhaustive factors of motivation, there can be numerous other related aspects of the same. These motivating factors can work wonders with the law students – the beginning is difficult, but the end is bright and noble – what requires to be done is to inculcate the culture of social responsibility amongst the students. Student advocacy is an apt idea to further the concept of voluntary legal service.

Moreover, there is a widespread belief (which is to a great extent true) that the recent phenomenon of 'national law schools' caters only to the needs of the corporate-sector characterised by fat-package and high-end

41. See generally, Bloch Frank, "The Clinical Method of Law Teaching" in N R Madhava Menon (Ed.), *Clinical Legal Education* (Eastern Book Co., 1998).

42. Lawyers, for whom less than Rs. 100 can serve as an incentive or a motivating factor, their competence or intention is not beyond question.

43. For somebody like M C Mehta, Mahasweta Devi or Medha Patkar money is not the motivating factor; money, perhaps, cannot be the motivating factor for rendition of services for the underprivileged and downtrodden.

clients. The culture of choosing socially responsible profession is largely absent.

Therefore, introducing law students to the 'realities of life' being faced by the socially and economically disadvantaged group of people might result in a shift in the orientation of the law students in general, and students of these 'national law schools in particular.

Law is a five years course after '10+2' (three years course after graduation), which means that a fourth year or fifth year student of law is equivalent to a post-graduation student in any other discipline of study. It has further been argued that the maturity level of a law student is much higher than that of her counterparts in other branches of academics.[44] At the end of fourth or fifth year (or, the last three semesters) the students can be attached with the legal aid clinic and can plead in the court of law under supervision of the clinical faculty (so designated) or an advocate (overseeing the clinical programme of the university or college). This should, however, be done only after obtaining prior permission of the judge of the court.

Legal education is not about memorizing the legal provisions of the different enactments, neither is it about comprehension of theories being taught in the class. The crux of the legal education is to understand theories, knowledge of legal research, analytical and critical evaluation through research and an understanding of working of law in the society (*i.e.* outside the classroom). Law should be a study of 'operation of principles as influenced by the different "variables" of the society'. Knowledge of legal principles in vacuum cannot serve any meaningful purpose – a good lawyer should be able to trace the interaction of law and society as it exists actually. This is what is termed as the "inter disciplinary approach" of legal education. To enable the law students to learn law, therefore, it is essential to expose them to the 'working of law in the society'.

The Bar Council of India Rules[45] provides for elaborate "Practical Training Scheme" of 400 marks for the law students of three year or five year degree course (part IV of the rules).[46] The purpose of any training programme in an academic curriculum is to acquaint the students with the complexities of the real life situations and orient them for their future

44. Bloch, *supra* note 41 at 26.

45. Rules made by the Bar Council of India in exercise of its rule-making powers under the Advocates Act, 1961.

46. The four papers of practical training contemplated under the Rules are – 'Moot Court, Pre-Trial Preparations and Participation in Trial Proceedings', 'Drafting, Pleading and Conveyancing', 'Professional Ethics, Accountancy for Lawyers and Bar-Bench Relations' and 'Public Interest Lawyering, Legal Aid and Para-Legal Services'.

professional conduct. It is through practical training that the students get to apply their theoretical and academic learning to real life situations. In this regard drafting, conveyancing and moot court practices have been made part of the law syllabus throughout the country. But, what the syllabus fails to recognize is the fact that simulation exercises and drafting cannot give the feel of the real situations that a professional is to face. The actual practice of law in the court of law is drastically different from what a student learns throughout her course of study.

This bridge between the academic discipline and the professional discourse seems to have been rightly balanced in the medical education scenario. A compulsory practical training for the medical students at the graduate level, where they treat real patients, is an inseparable part of the course curriculum. This is devised to introduce the medical students to the complexities of the real cases to be treated in future. This is intended to acquaint the medical students with the unforeseen situations that may arise during the course of any treatment.

In conformity to the abovementioned objective the Medical Council of India delineates the training scheme for the medical students.[47] This practical training is to be imparted after four and half years of their study – it is only after the completion of the practical training for one year, the students become eligible for the MBBS degree. Internship is an inseparable part of the curriculum, wherein the student-doctors are to treat "real patients" under supervision. Why then, the law students be not allowed to represent "real clients" in the court of law? Treating a patient is more risky an affair and affects the life of an individual. On the other hand, arguing a case is comparatively less risky as it may involve only the liberty or property of an individual. When treatments by student-doctors are permissible without much hassle, why should we not chart into the second proposition of student-advocacy as well.

Under the Advocates Act, 1961, advocates can take up teaching in pursuance of the Advocates (Right to Take up Law Teaching) Rules, 1979. But, on the other hand, law teachers are not permitted to plead in the court of law. The justification is rather difficult to gauge. Most of the time the law teachers are also enrolled advocates with the Bar Council. Allowing law teachers limited practicing rights would further facilitate student-advocacy (this would ensure an in-house supervisor for the student-advocates, who can also assist the students in the court).[48] Having contended

47. See Graduate Medical Education Regulations, 1997, *available at* http://www.mciindia.org/know/rules/rules_mbbs.htm —> (last visited 16/10/2006); also published in Part III, Section 4 of the Gazette of India dated 17th May, 1997.

48. Much like a mechanism in medical education, where the student-doctors practice/treat under their teachers' supervision.

the above, one understands that there requires to be some safeguards regarding practice by the student-advocates. To plug the possibility of mistakes or risks, a "Schedule" can be added to the Advocates Act specifying the cases/trials wherein student-counsellors can appear (under the supervision of their teacher). The judges can also have discretion in allowing a student-advocate to plead in a court of law upon consideration of the gravity of a case.

The abovementioned student-advocacy mechanism has been a feature of the American legal education for a long time. US allows advocacy by senior law students. Throughout the US by special 'student practice rules'[49] the law students practice in the court of law under supervision of a clinical faculty or a lawyer.[50] Student advocacy by the senior law students is allowed in addition to the simulation exercises and in-house client counselling and negotiating: [51]

> Students certified under student practice rules also negotiate with lawyers for opposing parties and represent clients before courts, administrative agencies, and other tribunals. The student practice rules in almost every jurisdiction are designed to facilitate the twin goals of clinical legal education:
>
> (1) teaching students how to learn lawyering skills and professional values through real-life lawyering experiences, and
>
> (2) providing needed legal services to clients traditionally unable to afford legal counsel.

Thus, allowing students to practise in the court of law would serve a twofold purpose – being a part of the clinical legal education and providing legal services voluntarily to the indigent people incapable of affording a quality legal representation. The practice by the students, however, should be "voluntary". It is to be ensured that the student-advocates should not charge the clients for the services rendered. They should only be allowed to take up cases requiring voluntary legal services – this can be ensured by canalising the cases to the student-advocates through the Legal Services Authorities. Absence of any payment towards the services rendered by the student-advocates should set off the objections of draining the payment from professional legal practitioners practising in the courts. And if such student-advocacy is made a part of the compulsory curriculum, "grades" in

49. Each State of America has enacted their own student practice rules to allow law students to represent indigent clients under limited license.

50. Joy Peter A, *supra* note 40.

51. *Ibid.*

the subject would act as a strong motivating factor, apart from the social and psychological motivation.

Conclusion

Y K Sabharwal J, the former chief justice voiced the importance of legal services to the poor in a country like India. He maintained that access to justice will come by spreading awareness, both about the rights and the remedies; it has to be accessible to all.[52] Legal services to the poor are still one of the most significant concerns of the legal fraternity in India, as it had been some 50 years ago.

If in the US, legal services rendered by the law students caters to the needs of the millions of poor Americans unable to afford a lawyer, its significance in the Indian context *cannot be underestimated.*

Recognising this immense potential of the law students to make a difference in the society, the "Expert Committee" and the Committee on "National Juridicare: Equal Justice – Social Justice" had proposed the use of law students (though in limited cases) for the representation of the poor and indigent in the court of law as early as in the 70s decade. It is high time that we consider the effectuation of the abovementioned committee recommendations with modifications customized to suit the present requirements.

While proposing the use of students as advocates it is never intended to mean that such use would be a panacea for all evils that cripples the legal sphere. This is being put forward as a solution that is limited in nature and addresses only a part of the problem of legal representation of the indigent.

There is huge number of pending cases in the country that might take 300 to 400 years to get disposed off at its present rate.[53] Lack of adequate number of judges may be one of the reasons of such huge number of pending cases; but a significant number of such pending cases results because of delays attributable solely to the advocates. Practising advocates have their own reasons and incentives to delay a case, which will be absent in case of student-advocates. Since the student-advocates shall not be paid, the calculations pertaining to "per hearing" will be absent; rather, they shall be overeager to see the completion of the case(s) they represented. Therefore, considering the number of pending cases in the different courts of the country, which is again ever increasing, the use of student-advocates would certainly help in reducing some of the burden of the courts in

52. *The Hindu*, Nov 15, 2006.
53. *The Telegraph*, *supra* note 13.

disposing the cases. This itself would be significant contribution by the law students towards the society that is still largely crippled by poverty and ignorance.

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