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SOME REFLECTIONS ON LEGAL AID
IN
CRIMINAL PROCEEDINGS.

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In a country like India, where majority of people live below the level of subsistence, justice for the poor (who are also often illiterate) is a far cry. Goldsmith had said once to illustrate this point that

"Laws grind the poor and rich men rule the law".(1)

If this was true of English Law as administered in England, it is more true of poor people in country like India where criminal justice is administered on the basis of common law principles. Criminals generally belong to that section of the society which is illiterate and poor. Our constitution proclaims that there will be equality before law. How can this equality be maintained in case of poor people who have no financial resources to meet the high cost of defence in criminal proceedings? In case of a crime, the state is the prosecutor and police (its own tool) is the investigator. The state puts the case before the court through the prosecutor or an eminent lawyer. Thus the state is equipped with all the resources to prove the charge. The poor man - the accused - is all alone to meet this offensive. Looking to this state of affairs the Marxist criticism that "under our form of Govt. law is a class weapon used by the rich to oppress the poor through the simple device of making justice too expensive" seems to be near the truth.

with the coming of independence our society has proclaimed through the constitution that there will be justice (social, Political and Economic) done to all. But how such a goal can be achieved without any substantial change in our legal system

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(1) Oliver Goldsmith - 'The Traveller' line 386.

and Institutions? A Social worker and a young lawyer often feels that the law is dead and they accuse the law of becoming but " a cog in the complex machinery by which a segment of society exploits, represses, and alienates, the majority". This remark appears to be more true and apt when we look to our own legal system which in many fields has little relevance to Indian conditions.

Criminals are arrested by police, investigation is done by its own people, charges are framed and forcefully pleaded by its lawyers. The only hope for the poor is the conscientious judge and the rule that the benefit of doubt should be given to the accused. A well-to-do accused may even weaken the whole offensive of the police by using indirect means at various levels (arrest, investigation and prosecution). But a poor and resourceless man is at the mercy of God that can save him, if at all. In ancient India criminals were free from any burden of cost.²

But now under our present system, justice (civil and criminal) is so costly that a poor man can-not afford it. So in a case of criminal proceedings he has to suffer injustice for want of financial resources.

One of the few good things done by the Govt. during emergency was the attention it paid to this problem of law. A slogan was raised for 'legal aid to poor'. But much work could not be done and legal aid to a poor man remained only a cherished dream.

2.(a) It appears that in disputes of criminal nature no court fees had to be paid in ancient India. Page 294.

(b) It may be said that in ancient times, Indian litigants had an easy time, while in modern times, litigation is often ruinous. Page 295.
History of Dharmashastra, Vol.III, by P.V.Kane.

In England much work has been done in this direction through Rushcliff Committee which was set up as early as 1944 and a statute called Legal Aid & Advice Act 1949 was passed by the Parliament. Thus "the mother of Parliaments did away with the ancient wrong that for the rich there is one law and for the poor another". This act is the citizens' shield against tyranny. A separate statute called Criminal Justice Act 1967 was enacted. Prior to these acts also in England there was some provision for legal aid to criminals which corresponded to our Sec.304(1) of Code of Criminal Procedure 1973. But like the English Act this provision in our law is "only an exceptional remedy intended to meet only an exceptional difficulty".

The 1967 Act of England makes complete and detailed provision for legal aid to criminals. Under the old Acts of 1903 and 1930 aid could be given only in cases of grave charges and in circumstances where the judge felt that aid was required to meet the ends of justice. Thus aid was like a charity. Almost similar was the situation in our law. According to the provision of old Cr.P.C. in a sessions trial an accused having no counsel was to be provided with the one.

Such a counsel will never win the faith of the accused. The accused will never trust such a lawyer and will rarely disclose his facts to him. Nor will such a lawyer, who will often be a junior (if not a briefless one), take required interest in such a case. To create faith in the accused, provision should be made for providing a counsel of one's choice (from among a panel of lawyers) exist in the British Act of 1967.

In our country Bombay Legal Aid Society invited the attention of the Govt. of India to appoint a committee like the Rushcliff Committee to examine the question of legal aid to poor and needy. Nothing was done then. However, in the year 1949 Bombay Govt. appointed a committee under the Chairmanship of a High Court Judge Late Mr. Justice N.H. Bhagwati to consider this question. It gave its report in 1949 where-in it was observed that the problem of legal aid under the modern conception of a welfare state is an obligation of the state and like other social insurances (free medical and educational facilities etc.) state should take upon itself the responsibility of giving legal aid to the poor. Thereafter other state Governments (Gujarat, West Bengal etc.) also had set up similar committees. But nothing substantial was done in this

regard. The Law Commission of India in its report on "Reform of Judicial Administration" published in 1958 had to remark that State Governments have not shown much enthusiasm about proposals to extend legal aid and the Commission again emphasised the need to render legal aid to the poor.

In 1960 the Central Govt. drew up an outline of a scheme for legal aid. It was forwarded to the State Govts. for comments.³ In a conference of State Law Ministers in 1962 the state Govts. expressed their inability to bear the financial burden involved in the scheme. Thus State Govts. have not been very enthusiastic in this direction.

Mr. Madhu Limaye, M.P. had introduced a Bill (Free Legal Aid Bill) in the Parliament in the year 1970 but it had no Government support and so it was lost.

Becoming conscious of the need of some reform in this direction Central Govt. appointed a committee under the Chairmanship of Justice Mr. V.K. Krishna Iyer in 1972. In its report the Committee observed that "the major strategy to end the estrangement between the law and the lowly is legal aid in its comprehensive coverage". It also observed that "legal aid is a basic and indispensable postulate of the legal system and is not a matter of charity."

'Criminal Procedure' is included in entry 2 of the concurrent list. This entry gives enough power to the Central Govt. to take effective steps through suitable legislative measures for making legal aid in criminal proceedings an obligation of the State Government.

Justice Krishna Iyer Committee has recommended that State funding and statutory incorporation should be the backbone of the scheme of legal aid. The Central Govt. has suitably changed the provisions of old code of criminal procedure. Under the present code of Criminal Procedure (1973) provision is made under Sec.303 for an accused to be defended by a pleader of his choice, ("of his choice" is added in the new act). Sec.304 of this new code provides that state

3. Scheme for Legal aid was supposed to be part of 'Administration of Justice' and as such it becomes a state subject (entry 3 of state list)

Govts. should make detailed provisions for selection of a pleader for the defence of a person of insufficient means and for facilities to be allowed to such pleader. It also empowers state Govt. to make such provision for aid in relation to any class of trials before other courts in the States. Thus the cumulative effect of both the sections may lead a person to think that our law makes an ideal provision for legal aid, although the fact is otherwise.

In matters of criminal proceedings state Govts. are in direct contact with the situation (State Govt. prosecutes the accused) and so it is the state Govt. only which should meet the cost of defence of the poor accused.

Justice N.H. Bhagwati Committee of Bombay (referred to above) had recommended that the people of backward classes, Schedule Castes and Schedule Tribes should be presumed to be prima facie entitled to legal aid at state cost. The Gujarat Committee set up under Justice P.N. Bhagwati had also recommended that people of (1) schedule castes (2) schedule Tribes (3) nomadic tribes (4) Denotified Tribes should be ipso facto presumed to be entitled to legal aid.

The various committees set up by the Govt. (Central and State) had considered grant of legal aid in civil as well as criminal proceedings and had therefore suggested that the person in need of legal aid must satisfy means test for being eligible to legal aid at state expense. The recent legal aid Act of the M.P. Govt. (Madhya Pradesh Samaj Ke Kamjon Vargon Ke Liye Vidhik Sahayata Tatha Vidik Salah Adhiniyam, 1976) also provides for the satisfaction of the means test as a precondition to the grant of legal aid.

Legal proceedings are so expensive that they spell a total ruin for a poor man who is accused of a crime. Because even if he is acquitted, he stands to gain nothing. Apart from the cost of the litigation, that he bears, the loss of his earnings also leads to his total economic ruin. It is therefore suggested that people of backward classes and persons not paying income tax must be granted legal aid in criminal cases as a right. In case of other persons means test may be applied. Provision should be made for a contributory scheme so that in matters of Criminal proceedings a person is granted legal aid immediately and as a right. He may be asked to contribute in proportion to his economic conditions (the total wealth and yearly income should both be taken into consideration).

As regards merit test legal aid must always be granted in Sessions Trials. In trials before Magistrates legal aid should be granted if the accused stands liable to suffer loss of liberty or livelihood. But he should always get the aid if he is too poor to meet the cost of the criminal proceedings.

As regards the procedure for the grant of such aid, it will be better if a panel of names of the lawyers who are willing to join in this scheme is kept ready in each court. No sooner is a person arrested or summoned before the Magistrate then he should be supplied with full information about the provisions of legal aid and the list of the names of the lawyers. After the accused has made the choice of the lawyer the Magistrate should issue a certificate of grant of legal aid and send it to the lawyer asking him to take up the case immediately.

Legal aid must not be limited to the fee of the lawyer for arguing the case, but it must also cover the cost of documents. A committee of the Bar Association of each town should be set up to administer the scheme of such legal aid.

It is suggested that a committee with wide terms of reference be set up to make a comprehensive scheme for such aid so that Govts. may be asked to take-up suitable steps in the light of its recommendations to make provision for legal aid in criminal proceedings. Provisions of section 304 of the code of Criminal Procedure will not prove effective unless Central Govt. takes initiative. Art. 59A. of our constitution gives clear directions to the State in this regard.

Litigation under our legal system is so costly that it almost ruins a poor man. In civil cases, the defendant is able to earn his livelihood even during the pendency of the suit but in criminal cases where the accused is arrested he loses his source of income and if he is the only bread winner in the family, he faces the danger of total economic ruin, even if he is able to get himself acquitted. It is therefore a crying need of the time that State Govt. should take up the scheme of legal aid (in criminal proceedings) in hand and to spend money on it from its exchequer to promote this scheme like other social insurance scheme. Then only our law will become functionally responsive to the needs of our society.