



Research Paper

Rethinking Criminal Legal Aid with an Access To Justice Framework

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ABSTRACT

Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process. Legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial 6 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems measures; promoting greater community involvement in the criminal justice system; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources

KEYWORDS- Free justice, poor, fair, efficient fairness.

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I. INTRODUCTION

The concept of access to justice in the sphere of civil justice has been undergoing considerable change for decades. Modes of resolving disputes have progressively moved out of the courts and into a variety of forms of alternative dispute resolution. The pace of change in new forms of access to criminal justice has not occurred nearly so rapidly. This is no doubt because the criminal justice process leaves little discretion for persons accused of crimes, whereas in matters of civil law people can often choose a wider range of options in dealing with their problems. However, changes in concepts of access to criminal justice are beginning to gain prominence.

The idea has been current in the literature for some time that the problems thrown upon the door of the criminal justice system reflect the institutional failures of the educational, social services, and family systems. The justice system is ill-equipped to deal with these problems because of their underlying social and economic dimensions. Recently, the restorative justice movement has taken hold as a major movement in the justice system. Restorative justice places an emphasis on dealing with the aftermath of crimes, and resolving the issues that brought the offender into conflict with the law in a manner satisfactory to the victim, the community and the offender.

The report warns that a rigid system of fixed fees and low pay is leaving firms specialising in legal aid struggling. The sustainability of legal aid providers is critical to ensure that those eligible for legal aid are able to be supported through what can be a complex and daunting system.

Criminal legal aid firms are finding it increasingly difficult to recruit and retain staff. Firms that rely on publicly funded work are not able to compete with the Crown Prosecution Service, who are able to offer significantly better pay and conditions. The Committee warns that without reform criminal defence services will be unable to provide the high-quality defence that is vital in an adversarial justice system. The Committee argues that the Government should remove the cap on what acquitted defendants can recover from central funds.

The Committee calls for the civil legal aid system to be overhauled. The Committee argues that early legal advice can help to make the courts operate more effectively. The legal aid system needs to be simplified to make it easier for those who eligible to access the services they require. Providers of civil legal aid are also facing sustainability issues, resulting in 'legal aid deserts' in certain areas, where people cannot access the specialist advice in for certain issues such as housing, immigration and community care. The Committee recommends that

the Government takes a more flexible approach to legal aid funding, so that the providers can be given the support to help the most vulnerable.

The current legal aid means test may also be creating a barrier to justice for some of the most vulnerable in society and impacting the fairness of the justice system. The Government should consider changing the eligibility thresholds and regularly increase them in line with inflation.

The sections of the society as enlisted under Section 12 of the Legal Services Authorities Act are entitled for free legal services, they are:

- (a) A member of a Scheduled Caste or Scheduled Tribe;
- (b) A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) A woman or a child;
- (d) A mentally ill or otherwise disabled person;
- (e) A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) An industrial workman; or
- (g) In custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956(104 of 1956); or in a juvenile home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987(14 of 1987); or
- (h) In receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

CRIMINAL LEGAL AID

Without a sustainable publicly funded criminal defence profession, suspects and defendants will not have access to high-quality legal support.

The report warns that some professions central to the application of fair and timely justice are hollowing out due to the impact of cuts to legal aid. Law firms are having difficulty in recruiting or retaining lawyers, with many leaving to join the Crown Prosecution Service. Fewer barristers are able to build their career through publicly funded work.

Further difficulties are arising due to the way the fee schemes are structured, and are not enough to support defence teams in providing the best quality service to their clients. Fixed fees do not reflect the complex nature of the cases that criminal lawyers undertake. The fall in the number of cases that are eligible for legal aid are also placing providers specialising in criminal defence at risk.

It calls for the current system to be overhauled so that providers are paid for all the work they do for their clients, not an arbitrarily established figure that fails to take the complexity of a case into account.

HISTORY OF ARTICLE 39A

Article 39A of the Constitution of India provides that 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

LEGAL AID IN CRIMINAL JUSTICE SYSTEM

Free legal aid is the provision of free legal services in civil and criminal matters for those poor and marginalized people who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any Court, Tribunal or Authority.

FOUR COMPONENTS OF ACCESS TO JUSTICE

Access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight.

IMPORTANCE OF CRIMINAL LEGAL AID

The legal aid system is there to ensure that everyone has access to justice. If the most vulnerable in society are being left to navigate the justice system on their own then fairness is lost and the system has failed.

REFERANCES

- [1]. M. Cappelletti and B. Garth, (eds.), *Access to Justice: A World Survey*, Vol. 1, Sitjoff and Noordhoff, Milan, 1978. p. 6.
- [2]. Mauro Cappelletti and Bryant Garth.
- [3]. Don Fleming, *Reconsidering the Theory Behind Legal Aid*, Paper presented to the "Legal Aid in a Changing World"; Conference, Legal Aid Board Research Unit, London, 1999.
- [4]. James Godley, "Variations on a Modern Theme"; in M. Cappelletti, et. Al., *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies*, Dobbs Ferry, N.Y., Oceano, 1975. p.86.
- [5]. Kayleen Hazlehurst, *Migration, Ethnicity and Crime in Australian Society*, Australian Institute of Criminology, 1987. p. 143.
- [6]. Don Clairmont, *Restorative Justice: From the Margins to the Mainstream*, Atlantic Institute of Criminology, Dalhousie, 1999. p. 1.
- [7]. *Expanding Horizons: Rethinking Access to Justice in Canada*. Proceedings of a National Symposium, Department of Justice, Ottawa, 2001.
- [8]. Cappelletti and Garth, *supra*.