

Making Legal Aid and Justice For Women
from Investigation to Decision A Reality
Through A Sensitized Judiciary.

---Justice Devi Prasad Singh

Justice is defined as the state of affairs when a 'person has been given what he is due or owed, and therefore has been given what he deserves or can legitimately claim'¹. Scholars, however, have identified various factors which present as 'barriers' to access to justice and restrain people to attain their legitimate claim. Hutchinson argues that barriers cause a difference between availability and access to justice². When discussing barriers to access to justice, Scholars have identified broadly two different types of barriers: 'subjective barriers' and 'objective barriers'. Subjective barriers relate to intellectual and physiological barriers including 'age, physical or intellectual deficiency the attitude of state functionaries such as the police, lawyer and judges'. The 'objective barrier' relates to 'purely physical barriers' including geographic dispersion of courts, availability of claims officers and lawyers, 'cost of obtaining legal redress', 'delay in legal proceedings' and 'structural complexity of the legal system'³. Due to their more vulnerable condition in the society compared to men, the high-cost and long disposal time of litigation compound to make it harder for women to access the formal justice system. Thus, due to delays in courts and high-costs of litigation women have difficulty in accessing the benefits of many protective laws guided by the personal laws or other secular laws to enhance women rights in the society. In fact, mere presence of legal rights will

1 Beauchamp T.L, Distributional Justice and the Difference Principle, in John Rawls' Theory of Social Justice: An introduction, Ohio University Press, Athens, 132-33 (1982)
2 Hutchinson A.C, Access to Civil Justice, Carcwell, Toronto, 181 (1990)
3 Macdonald R.A, Study Paper on Prospects for Civil Justice, Ontario Law Reform Commission, Toronto, 298- 300 (1995)

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not ensure justice to women if there is not an effective mechanism to make those legal rights affectively accessible to them. Legal aid can help to resolve disproportionate access to justice based on economic and social power⁴. Availability of adequate legal aid may help to relieve a part of the cost burden from the shoulders of poor women by enabling them to get free services from lawyers and subsidies to cover other court charges⁵. It enables many disadvantaged women in society to access justice who would otherwise be denied access to court. It also increases the respect of general people towards law and judiciary⁶. The practice of government legal aid programs dates back to 14th century Europe when Henry VII waived court fees for poor litigants, and empowered courts to provide 'legal representation' by appointing lawyers for these poor clients⁷. In 1960, the United States of America experienced a new concept of legal aid funding which included not only provision of legal advice and legal representation in the court but also provision of legal information and education to make people more informed about their rights. Similar concepts were later introduced in Australia, Canada and other parts of Europe⁸. Whatever form legal aid takes, the main problem remains in its scarcity and limited accessibility to the poor. The poor illiterate and the marginalised peoples are not aware of the existence of legal aid programmes and even where they are aware of it; they are not likely to be persuaded to avail of it for a number of reasons. The phrase, '*ignorance of law, no excuse*' should not be applied to poor marginalised and illiterate peoples. Law should reach to their door on

4 Rhode D., Access to Justice, Fordham L. Rev., 69(5), 1785-1811 (2000-01)

5 Mack K., Alternative Dispute Resolution and Access to Justice for Women, Adelaide L. Rev., 17(1), 123-46 (1995)

6 Rhudy R.J., Expanding Access to Justice: Legal Aid Models for Latin America, in Justice beyond our Borders: Judicial Reforms for Latin America and the Caribbean, John Hopkins University Press, Washington D.C., 53-58 (2000)

7 Silverstein L., Waiver of Court Costs and Appointment of Counsel for Poor Persons in Civil Cases, Valparaiso University L. Rev. 2, 21-36 (1967-68)

8 Blankenburg E., Lawyers' Lobby and the Welfare State: The Political Economy of Legal Aid, in The Transformation of Legal Aid, Oxford University Press, Oxford, 113-32 (1999)

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its own to impart justice. The functioning of the courts and socially awoken people should possess different 'mindset' while dealing with the poor illiterate and marginalised people.

The violation of women's fundamental rights through physical, mental, emotional, and sexual violence against women has become almost commonplace in the Indian context. Violence against women has taken particularly acute forms in circumstances where populations are already marginalized, such as in areas affected by armed conflict, areas undergoing mass displacement. Women in the Tribal belts and amongst Dalit populations are already vulnerable, and become even more so in areas affected by conflict. There is therefore a pressing need for the judiciary to recognize and address the particular forms of violence levied against women who are 'doubly marginalised' by caste, class, religion, or in situations conflict. Customary routinely laws discriminate against women, both by denying justice to victims of violence and by dispossessing women from their shares in land and property. A number of laws that protect women from discrimination have also either inadequate, or have not been properly implemented.

The framework of 'women's justice' involves not only the prevention of specific forms of violence and discrimination against women, but also encompasses all other human rights, including the right to food and health; disability, housing labour rights; dalit/ tribal/ adivasi rights; environmental justice; criminal justice, etc. With this holistic vision of equality and gender justice, we require committed persons or team to interact directly with poor and marginalized women as well as through legal education, advocacy and policy analysis to continue the struggle for women's rights.

Through legal education and training for social activists, mahila panchayats, police personnel, lawyers, law students, paralegals, etc., it requires to integrate women's issues into the general discourse on justice and human rights. Judicial colloquia and legal consultations is

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a crucial aspect of our work, to sensitize judges and strategize the development of women's rights law in India. To avoid such situations members of the law enforcement agencies must be educated and sensitized abundantly, so that women, particularly those from the lower strata and disadvantaged groups, do not face apathy and callousness while approaching them to seek justice. All persons in administration, police, judiciary, NGOs and the media should be trained.

While canvassing for legal aid and justice for woman from investigation to decision and sensitization of judiciary, the ground realities of the society may not be overlooked. Three growing faculty of socio economic environment of world or India i.e. consumerism, pornography and corruption create multiple brand of atrocities. According to report, every second 3,075.64 \$ is spent on pornography, 28,258 people are viewing pornography every second, 372 people while using INTERNET are typing adult search terms in every second. In every 39 minutes, a new pornographic video is created in the United States of America. Until 1999 United States of America video depictions of hardcore material were illegal but later on to remove barrier European Members allowed for free movement. Though child pornography is illegal in United States of America with punishment up to ten years but it is available on different sites in abundance. Psychologist says, man is affected by his environment or surroundings from the very beginning of life i.e. childhood. There is no effective law to check display of pornography on the Internet in the country. It affects majority of citizens from top to bottom young and old. It is also because of these sites women are molested, raped in police station and outside the police station by the police personal and government officers and sometime legislatures and antisocial elements in general. Country requires preventive steps to streamline the system for better governance.

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For better output we require corrupt-less system from Investigating Officer to Presiding Officer of the court or tribunal. Persons dealing with the subject be inspired to be committed to cause of his/her duty. Unless the persons at the helm of affairs are not honest, fair and possess "work culture", it shall be futile to exercise for sensitization programme that too once or twice in a year. Kautilya (321 BC) in Economic says, to quote, "*Judges shall discharge their duties objectively and impartially so that they may earn the trust and affection of the people.*" Investigation by lady officers or prosecution by lady Officer is not sufficient. Now it is not uncommon when lady Investigating Officers are found to be indulged in unfair practices. We have failed to check the menace of child sex abuse, foeticide or molestation of women and minor child only because of the bad governance and overburden judiciary. However, this is the subject matter on the part of government and in some cases on the part of higher judiciary to issue appropriate order or direction and periodical monitoring of the set up.

Sensitization means to make something notice or understand a situation or problem⁹. A person cannot understand the situation or problem unless he or she is well-versed with the ground reality of society.

Uttar Pradesh contains 16.4 per cent of the country's population covering 9.0 per cent of the country's geographical area, encompassing 2,94,411 square kilometres and comprising of 83 districts, 901 development blocks and 112,804 inhabited villages. The density of population in the state is 473 person per square kilometres as against 274 for the country. In 1971 population was 8.8 crores which become 13.9 crores in 1991. It is assumed that now population of Uttar Pradesh is about 20 crores. The incidence of poverty in the state has fallen from about 57 percent in 1973-74 to 42 percent in

⁹ from Macmillan dictionary

1987-88. The fall in the incidence of poverty is slightly more in the rural areas. However, the numbers of population below the poverty line have increased by 31 between 1977-78 and 1987-88.

The national literacy rate is 74% whereas 67.55% population in rural area and 77.01% in urban area are literate in the State of U.P. Male literacy in State of Uttar Pradesh is 82.8% in cities. In rural area 79.2 % whereas country male literacy is 82.1 %. The female literacy in the State of Uttar Pradesh is 59.3% almost 6% lower than national literacy rate which is 65.5%. Female literacy in rural U.P. is 55.6 % whereas in Urban area it is 71.7 %.

While planning for legal aid and justice for woman the socio economic conditions and literacy rate should be taken into account otherwise decision taken and acted upon shall be fizzled out without any output.

Uttar Pradesh, in 1992-93 only 50 percent of literate males and 40 per cent of literate females could complete the cycle of eight years of schooling involved in the primary and middle stages. One other distinguishing feature of Uttar Pradesh education system is the persistence of high level of illiteracy in the younger age group. Within the younger age group, the illiteracy was endemic in rural. In the late 1980s, the incidence of illiteracy in the 10-14 age group was as high as 32 percent for rural males and 61 per cent for rural females, and more than two-thirds of all rural girls in the 12-14 age group never went to school. Female expects to alive less than 55 years and the under-five mortality rate is as high as 141 per thousands. In these respects Uttar Pradesh resembles Saharan Africa for with 53 years of life expectancy and 160 under five mortality rate. Among all major Indian states, Uttar Pradesh has the highest under five mortality rate, the second highest crude death rate and the third lowest life expectancy figure. The number of maternal deaths per 100,000 live

birth in the state estimated to be 931 in the mid 1980s. If a girl is born in Kerala she can expect to live 20 years longer than if she is born in Uttar Pradesh. The probability that she will die before the age of one is more than six times as high in Uttar Pradesh than in Kerala. According to the recent National Family Health survey, Uttar Pradesh comes second to Bihar among the major Indian states in terms of the incidence of under nutrition among children below the age of five.

India's per capita income, a gauge for measuring living standard, is estimated to have gone up 11.7 per cent to Rs 5,729 per month in 2012-13 at current prices, compared with Rs 5,130 in the previous fiscal. Under these ground realities the infrastructure for the legal aid and justice to women should be worked out.

There is one other aspect of the matter. 2.68 crores cases are pending in courts all over the country. The sanctioned number of Judges is 17866, out of which 3732 posts are vacant. Average time taken in civil cases is 15 years in criminal cases it is around seven years.¹⁰ In Allahabad High Court the total pendency of cases is about ten lacs and odd. Fifty seven lacs ninety eight thousand and odd cases are pending in district and subordinate courts as on 31.12.2011 in the State of U.P. Judges as well as Judicial Officers are overburdened. Sensitization under the shadow of such a large number of pending cases that too under insufficient infrastructure is a difficult task but the courts may not be moot spectator. It requires a mindset and honest approach to deal with the situation.

Inculcation of knowledge and sensitization of officers through seminars, are forgotten after certain span of time. It requires periodical hammering of the mind of persons who are engaged in investigation and decision making process dealing with the atrocities of woman. By regular or periodical conversation, debate and seminars we may, to some extent, change the mindset of Investigating Officer and

¹⁰ Times of India dt. 15.5.2013

Presiding Officer of the Court to deal with the subject effectively within the reasonable period.

In the present scenario country wants more than what has been given by Supreme Court, through Vishakha¹¹, Delhi Domestic Working Women Forum¹², Gurmit Singh¹³ and other decisions. In a recent judgment¹⁴, Supreme Court of India had issued following directions, to quote:-

“36. We, therefore, issue directions, which the courts dealing with the matrimonial matters shall follow:

a) In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the Counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time limit.

b) The criminal courts dealing with the complaint under Section 498-A of the IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A of the IPC is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the concerned court to work out the modalities taking into

¹¹ Vishaka Vs. State of Rajsthan: (1997) 6 SCC 241

¹² Delhi Domestic Working women's forum Vs. Union of India and others (1995) 1 SCC 14.

¹³ State of Punjab Vs. Gurmit Singh and others, AIR 1996 SC 1393

¹⁴in Civil Appeal No. 1794 of 2013, K.Srinivas Rao Vs. D.A.Deepa decided on 22.2.2013

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consideration the facts of each case.

c) All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage."

A part from procedural and statutory provisions country want 'a mindset' across the Board with a work culture, commitment and spirit to save the dignity and prestige of our ladies.

Competent persons should be chosen from open field to provide legal aid and subject to output reasonable honorarium should be paid and working be monitored regularly. A time bound investigation must be done in the complaints or FIR lodged by the woman and Court should also give priority to decide such cases. Keeping in view the number of priorities in present scenario relating to variety of disputes and problems the designated courts may be created to deal with subject to adjudicate dispute within the specified period. Government must provide additional infrastructure to the administration of justice to cope with the situation.

---Justice Devi Prasad Singh

Judge

High Court of Judicature at Allahabad
Lucknow Bench, Lucknow (U.P.) INDIA

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