

ISSN: 2582 - 2942



# LEX FORTI

---

LEGAL JOURNAL

VOL- I ISSUE- VI

AUGUST 2020

## DISCLAIMER

---

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

# EDITORIAL BOARD

---

**EDITOR IN CHIEF**

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

**EDITOR IN CHIEF**

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE  
OF ARBITRATORS

PHONE - +91-8500832102

**EDITOR**

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+ YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK EXPERIENCE IN BANKING SECTOR; CONTENT WRITER FOR BUSINESS TIMES AND ECONOMIC TIMES; EDITED 50+ BOOKS ON MANAGEMENT, ECONOMICS AND BANKING;

**EDITOR**

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS INTERNATIONAL UNIVERSITY) - MARKETING MANAGEMENT

ISSN: 2582 - 2942

# EDITORIAL BOARD

---

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL AND  
ADMINISTRATIVE LAW)., NET (TWICE) AND SET (MAH.)

EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

EDITOR

MS.SRISHTI SNEHA

STUDENT EDITOR



## ABOUT US

---

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



**Effects of Economic Distress on Legal Aid Services Amid Covid-19 Pandemic  
in India**

**Anurag Kushwaha**

## INTRODUCTION

---

The concept of providing justice to the weaker sections of the society was forwarded by several pioneers throughout Indian history, after independence. It was quite clear that people were being exploited economically as well as socially, including mainly the labourers, women, children, and disabled groups.<sup>1</sup>

Hence, the need for legal aid was strongly felt and after the enforcement of the Legal Services Authorities Act, 1987 (hereinafter referred as 'the Act'), the purpose of providing justice to the weaker sections of society was recognised and Lok Adalats and several other legal services authorities were constituted. National Legal Services Authority (NALSA) is the apex legal services institution that also funds the other related bodies.<sup>2</sup>

Even under the Constitution of India, Article 39A mentions free legal aid for the economic/differently abled groups. The responsibility of implementing legal aid schemes was provided to the committee formed under Justice P.N. Bhagwati in 1980 who had been actively involved in preaching about the importance of legal aid.<sup>3</sup>

However, the COVID-19 pandemic has resulted in a sharp downturn in India's economic condition and the paper aims to firstly explain the concept of legal aid briefly and further the economic effects of COVID-19 on India and then discuss the main theme of the paper, which is, the impacts of economic distress on legal aid services, followed briefly on the way ahead and the conclusion that would aim to suffice the major role of justice delivery system in such time.

## IMPORTANCE OF LEGAL EMPOWERMENT AND ACCESS TO JUSTICE

---

In today's context, there is a need to provide timely justice to those in need with lesser resources. Legal aid was brought forward for this reason. Considering the inadequate number of courts, judges, and

---

<sup>1</sup> The Expert Committee on Legal Aid, *Processual Justice to the People*, 115 (May 1973).

<sup>2</sup> NALSA, *About us*, available at <https://nalsa.gov.in/about-us> (Last visited on June 29, 2020).

<sup>3</sup> *Id.*

the advent of legal aid services at the beginning of this century, it is obvious that litigation is not a suitable method for many and rather there is a need for alternative dispute resolution.<sup>4</sup>

The judiciary has stated every now and then, that legal aid is of utmost importance and keeping the marginalised groups away from justice is not only antithetical to the idea of justice but also the purpose of courts and lawyers. As Justice P.N. Bhagwati observed while commenting on Public Interest Litigation in *People's Union for Democratic Rights & Ors. v. Union of India & Ors.*, which also highlighted the epistolary jurisdiction of the court, that a large number of people from deprived or vulnerable sections are looking to the courts for improving their living conditions.<sup>5</sup>

The need for reform was also mentioned by him and it cannot be denied that the structural reform in the judiciary and legal services is absolutely required now that the courts are mostly limited to those with proper internet facilities and the underprivileged people are facing a setback.<sup>6</sup> Before studying the impacts of the degrading economy on legal aid during the pandemic, it is crucial to discuss its ill effects on India's economy first.

## **ECONOMIC EFFECTS OF COVID-19 PANDEMIC ON INDIA**

---

COVID-19 pandemic has changed a lot of things, at least for the time, and has brought the future closer to us. However, the strict lockdown measures and the slowdown of the economy has taken a downturn in India and also several other countries.

The difference can be understood by the *United Nations World Economic Situation and Prospects Report* in January 2020 in which it was already claimed that South Asian economies are more exposed to shocks, extreme weather, and price fluctuations. But still, 2020 was supposed to be a slightly brighter year for India as the rate of economic expansion was projected to be 6.6%.<sup>7</sup> Although, after the advent of the

---

<sup>4</sup> Anurag K. Agrawal, *Role of Alternative Dispute Resolution Methods in Development of Society: 'Lok Adalat' in India*, 03, (IIMA Working Papers WP2005-11-01, Indian Institute of Management Ahmedabad, Research and Publication Department.) available at <https://ideas.repec.org/p/iim/iimawp/wp01913.html> (Last visited on June 20, 2020).

<sup>5</sup> *People's Union for Democratic Rights and Others v. Union of India and Ors.*, 1982 SCC (3) 235, at 16.

<sup>6</sup> Live Law, *SC Not in Favour of Resuming Open Court Hearings Soon Amid Rise In COVID-19 Cases*, June 10, 2020, available at <https://www.livelaw.in/top-stories/sc-not-in-favour-of-resuming-open-court-hearings-soon-amid-rise-in-covid-19-cases-158086> (Last visited on June 16, 2020).

<sup>7</sup> United Nations Department of Economic and Social Affairs (UN DESA), *World Economic Situation and Prospects (WESP) 2020*, 140-142 (January 16, 2020).



pandemic and based on another report published in May 2020 that updated the previous one, the projected economic growth for the country fell down to 1.2%.<sup>8</sup>

Also, the worst impact of this issue was bound to fall down on the lower sections of the society, as it is claimed that about 400 million workers in the informal sector (one of the major sectors for Indian workers) have a risk of falling deeper in the state of poverty.<sup>9</sup>

## **IMPACTS OF THE ECONOMIC DISTRESS ON THE LEGAL AID SERVICES**

---

Before discussing the impacts in recent times, it is important to look back and understand the position of legal aid services before the pandemic. In a report by the Commonwealth Human Rights Initiative, which was published in 2018<sup>10</sup>, it was found that:

- Per capita spending on legal aid in India is merely Rs. 0.75.
- There is a 14% under utilisation of funds that are allocated to the State Legal Services Authorities.
- There is only one legal aid lawyer per 18,609 people in India.
- Only 3% of the fund was spent on training the lawyers or people involved in legal aid services.

Such findings are often questioned or countered as the position of legal aid in India is better than it was before, which most claim that supports the view, as even NALSA stated that about 14,75,577 people were benefited through legal services in April 2018-March 2019.<sup>11</sup> The fact cannot be denied but as the pandemic and its worsening impacts on the economy and the prospects come into the light<sup>12</sup>, it is imperative that a robust structural legal aid system is built and maintained as even though

---

<sup>8</sup> United Nations Department of Economic and Social Affairs (UN DESA), *World Economic Situation and Prospects (WESP) as of mid 2020*, 19-20 (May 13, 2020).

<sup>9</sup> International Labour Organization (ILO), *ILO Monitor: COVID-19 and the world of work*, second edition, 16, (April 7, 2020).

<sup>10</sup> Commonwealth Human Rights Initiative (CHRI), *Hope Behind Bars? Status Report on Legal Aid for Persons in Custody*, (September 18, 2018) available at <https://www.humanrightsinitiative.org/publication/hope-behind-bars-status-report-on-legal-aid-for-persons-in-custody> (Last visited on June 27, 2020).

<sup>11</sup> National Legal Services Authority, *Legal Services Beneficiaries, April 2018 to March 2019*.

<sup>12</sup> *Supra* note 8.

legal aid benefits several people, there is still a large section of the society that is left out<sup>13</sup>, and in my opinion is getting larger in number with the imminent threats to employment and economy as observed in the sections above.

The condition of legal aid services is not very promising, as empirical research in the city of Delhi examines about 720 primary data that resulted in findings, that revealed about 98% people do not even trust the quality of legal aid counsels and are often compelled to pay money, which defies the purpose of legal aid altogether.<sup>14</sup>

The eligibility for legal aid includes the members of SC/ST, victims of trafficking in humans, women/children or persons with disabilities, victims of a mass disaster, ethnic violence, caste atrocity, natural or industrial disaster, an industrial workman, or a person in custody.<sup>15</sup> While justice cannot be denied to any person merely because there is no means to pay the prescribed fees involved at various stages of litigation<sup>16</sup>, but the findings observed above clearly reflect the position of legal aid services presently that along with courts are facing adversities due to the pandemic and social distancing measures, with only e-courts being functional.<sup>17</sup>

In a time of recession or slow economy, it is obvious that the need for legal services is more as an increasing number of people become eligible for legal aid and have to seek justice. It is also observed that the legal services fund is required to be increased and the role of local government, foundations, law schools increases furthermore, without which the gap of legal services availability only increases<sup>18</sup>, which is the highlighting issue during the pandemic.

Hence, the following are the major impacts that the ongoing economic slowdown has on legal aid services:

---

<sup>13</sup> People's Union for Democratic Rights and Others v. Union of India and Others, 1982 SCC (3) 235.

<sup>14</sup> Dr Jeet Singh Mann, *Impact Analysis of the Legal Aid Services Provided by the Empaneled Legal Practitioners on the Legal Aid System in the City of Delhi*, 35-37, Final Report of the Research Project Under the University Grants Commission Research Award 2012-14 (March 07, 2017).

<sup>15</sup> The Legal Services Authorities Act, 1987, §12.

<sup>16</sup> See A.A. Haja Muniuddian v. Indian Railways, (1992) 4 SCC 736.

<sup>17</sup> *Supra* note 6.

<sup>18</sup> Center for American Progress ("CAP"), *And Justice for All, Prioritising Free Legal Assistance During the Great Recession*, 1-2, (July 08, 2009) available at <https://www.americanprogress.org/issues/poverty/reports/2009/07/08/6338/and-justice-for-all/> (Last visited on July 02, 2020).

1. The issues regarding the inefficiency of the core justice bodies have been leading to increased pressure on higher courts already as found in empirical research.<sup>19</sup> The Supreme Court with its guidelines for the functioning of courts across India<sup>20</sup> did take into account the help of technology in maintaining access to justice but in my opinion, perhaps had to look over the lower sections of society and remote areas where the reach of justice has always been questioned and with the issuance of guidelines are questioned more.
2. Funding for legal services is important to keep the legal aid functioning, but with no robust support from the government as financial aid and most of the courts shut down while only taking up urgent matters, several lawyers are finding it difficult to survive this economic struggle that has come along with the coronavirus pandemic.<sup>21</sup> The under utilization of funds allotted for legal aid was one of the major findings in the *Increasing Access to Justice for Marginalized People: GoI-UNDP Project*<sup>22</sup>, a few years back and it is quite obvious that the non-availability of the funds and worsening economy recently will have increased adverse impacts on legal aid.
3. Apart from the funding and functioning of courts, it can be very well understood that the lawyers or workers involved in legal aid services are facing a professional inequality and can hardly manage to travel or reach out to the remote areas due to the social distancing norms and non-functioning of public travel facilities in many regions from where people need legal aid services.<sup>23</sup>

---

<sup>19</sup> Jayanth K. Krishnan, Shirish Naresh Kavadi, Azima Girach, Dhanaji Khupkar, Kalindi Kokal, Satyajeet Mazumdar, Ms. Nupur, Gayatri Panday, Aatreyee Sen, Aqseer Sodhi and Bharati Shukla, *Grappling at the Grassroots: Access to Justice in India's Lower Tier* (2013), 515. Harvard Human Rights Journal, Vol. 27, 2014, Forthcoming, Indiana Legal Studies Research Paper No. 268, available at <https://ssrn.com/abstract=2297152> (Last visited on June 17, 2020).

<sup>20</sup> NDTV, *Top Court Issues Guidelines for Court's Functioning Amid COVID-19 Crisis*, April 06, 2020, available at <https://www.ndtv.com/india-news/coronavirus-india-supreme-court-issues-guidelines-for-courts-functioning-amid-covid-19-crisis-2207142> (Last visited on June 18, 2020).

<sup>21</sup> Scroll.in, *India's coronavirus lockdown is revealing deep income disparities in the legal profession*, April, 10, 2020, available at <https://scroll.in/article/958528/indias-coronavirus-lockdown-is-revealing-deep-income-disparities-in-the-legal-profession> (Last visited on June 18, 2020).

<sup>22</sup> Ministry of Law & Justice, Department of Justice, *Increasing Access to Justice for Marginalized People: GoI-UNDP Project*, 2013-2017, 05.

<sup>23</sup> *Supra* note 21.

4. Another factor involved in the country's dense and differentiated population that has always needed a specific aid for its specific legal needs but has only got a generalized response.<sup>24</sup> The underprivileged classes should certainly not go through this, as they are most exploited. The legal aid lawyers often don't show up for a hearing or force the aggrieved parties to pay money.<sup>25</sup> Due to the pandemic and a resulting slow economy, this issue is bound to get serious unless the government interferes and the judiciary realizes its role for the often overlooked sections of society, which it has always preached about.
  
5. The Supreme Court of India had taken suo motu cognizance and ordered the central government to ensure adequate food, shelter, and transport for the migrant workers going back to their homes<sup>26</sup> which although were contradictory to the court's statement before<sup>27</sup>. Clearly, such steps are appreciated and much needed as directions for the Centre and other State High Courts to pursue but the irony that most of the root level bodies or institutions that provide legal aid services are not equipped or able to provide legal aid in such time, questions the purpose of justice. The financial impact due to the worsening economy and several shutdowns is keeping away these organizations from actually realising such cognizance or directions, while the top tier bodies like NALSA are actively participating in responding to the grievances of people in need and are trying to build a strong network for online or telephonic assistance.<sup>28</sup>

---

<sup>24</sup> Clarence J. Dias, *Research on Legal Services and Poverty: Its Relevance to the Design of Legal Services Programs in Developing Countries*, 152, 1975 WASH. U. L. Q. 147 (1975), available at [https://openscholarship.wustl.edu/law\\_lawreview/vol1975/iss1/11](https://openscholarship.wustl.edu/law_lawreview/vol1975/iss1/11) (Last visited on June 13, 2020).

<sup>25</sup> Scroll.in, *How well do India's free legal aid services work? Not nearly well enough?* May 19, 2018, available at <https://scroll.in/article/877225/how-well-do-indias-free-legal-aid-services-work-not-nearly-well-enough> (Last visited on July 01, 2020).

<sup>26</sup> The Hindu, *Supreme Court orders Centre and States to immediately provide transport, food and shelter free of cost to stranded migrant workers*, May 26, 2020, available at <https://www.thehindu.com/news/national/supreme-court-takes-suo-motu-cognisance-of-migrant-workers-issue/article31679389.ece> (Last visited on July 02, 2020).

<sup>27</sup> The Hindu, *Coronavirus lockdown, can't stop migrants from walking home, says Supreme Court*, May 16, 2020, available at <https://www.thehindu.com/news/national/coronavirus-lockdown-cant-stop-migrants-from-walking-home-says-supreme-court/article31595912.ece> (Last visited on July 02, 2020).

<sup>28</sup> NALSA, *Notifications*, available at <https://nalsa.gov.in/notifications/35> (Last visited on June 03, 2020).

## V. THE WAY AHEAD

---

As Justice P.N. Bhagwati once said, “Government alone will never be able to do it. ... It is only the people themselves who must utilize law for the purpose of bringing justice to the doorsteps of the large masses of people of the country.”<sup>29</sup> It should be realised that in a time when the projected economic growth is at such low<sup>30</sup>, and the country’s financial plans do not give priority to the funding towards legal aid, the responsibility of helping the underprivileged sections should be shared by all of us.

The paralegal volunteers working under NALSA are to take an active role in helping the poor<sup>31</sup> and along with such steps, there is a need to look back in history when Harivallabh Parikh reshaped the facility of access to justice for people living in the Rangpur village of Gujrat. In a research conducted by Upendra Baxi<sup>32</sup>, the Lok Adalat system set up by him was analysed in a village where tribal people lived and had no organised way of sustaining their lives or support in reaching out to police/courts for their grievances. The use of local language for documentation work and shaping the procedure of hearing cases and letting the people participate sets out a strong background for remodeling of legal aid in remote areas, wherein the time of pandemic and a slow economy, not many facilities are available. It may not be possible however to shape the legal aid strictly in terms of this precedence but immediate efforts could be made to reach people.

In its reference, an example could be the launch of mobile legal services to reach out to such people as done in Maharashtra.<sup>33</sup> One of the praiseworthy steps taken by NALSA regarding it is the launch of tele-law service in Patna, Bihar.<sup>34</sup>

---

<sup>29</sup> Justice P.N. Bhagwati, Former Chief Justice of India, Speech at Columbia Law School: India’s Human Rights Law (March 31, 2009).

<sup>30</sup> *Supra* note 8.

<sup>31</sup> Jurist, Aviral Agrawal and Priyansh Mishra, Legal Aid in India Amid the COVID-19 Lockdown, May 02, 2020, available at <https://www.jurist.org/commentary/2020/05/agrawal-mishra-india-legalaid/> (Last visited on June 05, 2020).

<sup>32</sup> Upendra Baxi, *From Takrar to Karar: The Lok Adalat at Rangpur - A Preliminary Study*, 10 J. CONST. & PARLIAMENTARY STUD. 52, (1976).

<sup>33</sup> *Supra* note 19.

<sup>34</sup> NALSA, *Notifications*, available at <https://nalsa.gov.in/notifications/20> (Last visited on July 05, 2020).

Apart from it, in the context of the need for a converging role among various institutions and bodies<sup>35</sup>, the importance of clinical legal education for the future cannot be denied. The law students are required to be introduced to the social reality to make them better fighters in justice. The lack of legal awareness, especially in rural areas can be met only with the support of the youth as the Legal Aid Society of NUJS, Kolkata set out an example of collaborating with NGOs and Legal Services Authorities to help the Scheduled Caste people in Puri, Odisha in their fight for justice.<sup>36</sup>

## VI. CONCLUSION

---

Lawyers are the forerunners in the fight of justice for people seeking legal aid and with meager financial help and burden of cases in the category of legal aid services, they are often compelled to move out or seem disinterested.<sup>37</sup> Hence, the apex court and other high courts should encourage lawyers working at the ground level in making them realize their role in providing justice and taking part in pro bono services, by an active epistolary jurisdiction and also an active approach in reaching out to people in need to provide justice.<sup>38</sup> With a favourable policy environment<sup>39</sup> and good pre-litigation and alternative dispute resolution system<sup>40</sup> along with active measures by the government, the economic distress and resulting impacts can be countered. This sets out to become a wider scope for research, with which probable solutions for the suffering legal aid services during the pandemic or for the near future can be found. The deep impacts of the slow economy as above should be fought against and helping the most vulnerable and marginalized groups as mentioned in section 12 of the Act and narrowing the gap towards access to justice, should be our priority.

---

<sup>35</sup> S. Sood, (2019). Convergence in the Practice of Legal Aid to Improve Access to Justice. Asian Journal of Legal Education, 6(1–2), 21, available at <http://www.probono-india.in/research-paper-detail.php?id=123> (Last visited on July 02, 2020).

<sup>36</sup> Shuvro Prosun Sarker, *Empowering the Underprivileged: The Social Justice Mission for Clinical Legal Education in India*, International Journal of Clinical Legal Education, 2012, available at [https://www.researchgate.net/publication/305004391\\_Empowering\\_The\\_Underprivileged\\_The\\_Social\\_Justice\\_Mission\\_For\\_Clinical\\_Legal\\_Education\\_In\\_India](https://www.researchgate.net/publication/305004391_Empowering_The_Underprivileged_The_Social_Justice_Mission_For_Clinical_Legal_Education_In_India) (Last visited on June 13, 2020).

<sup>37</sup> *Supra* note 25.

<sup>38</sup> *See* Sheela Barse v. State of Maharashtra, 1983 SCR (2) 337.

<sup>39</sup> Sood, *supra* note 35, 27.

<sup>40</sup> *Supra* note 22, 07.