

Appearing in Court in India: Challenges in Representing the Marginalised

S. Muralidhar*

Abstract

This article reflects on the challenges faced in the process of improving access to justice and representation of the marginalized communities in the legal system. The author has drawn reflections from his own career as a human rights lawyer. Explaining this, the author first highlights the barriers faced by marginalized communities in the legal system, and then narrates the challenges faced by those who seek to represent the marginalised or espouse their causes. The emphasis of the article is on understanding what it means to be a marginalised person facing the barriers of the system. Lastly, the article suggests institutional measures to approach the challenges thrown up in the process of representing the marginalised.

Keywords

Access to justice, representation, Ambedkar, marginalized, legal profession

Background

This article is an edited version of the lecture delivered by Dr. Justice Muralidhar (Chief Justice, High Court of Orissa) on 14 April 2022 as a part of CEDE's¹ Second

*Chief Justice, High Court of Orissa, India

¹CEDE is a network of lawyers, law firms, judges, and other organisations and individuals, who are committed towards reforming the Indian legal profession. It was founded in April 2021 by Disha Wadekar (Lawyer, Supreme Court of India), Anurag Bhaskar (Assistant Professor, O.P. Jindal Global University, India), and Avinash Mathews (Lawyer, Supreme Court of India). Since its inception, CEDE has been organising annual Dr Ambedkar Memorial Lectures. The first inaugural lecture in 2021 was delivered by Dr. Justice DY Chandrachud (Judge, Supreme Court of India) on the topic “Why Representation Matters”. The Editors of the Journal are grateful to CEDE team (Community for the Eradication of Discrimination in Education and Employment), for facilitating the process of publishing this article in the Journal.

Annual Dr Ambedkar Memorial Lecture on the topic “Appearing in Court: Challenges in Representing the Marginalised”.

Introduction

It is a privilege to be invited to speak on the occasion of the birth anniversary of Dr. Ambedkar and the completion of one year of the launching of the Community for Eradication of Discrimination in Education and Employment (CEDE).

A year ago, three young lawyers Anurag Bhaskar, Disha Wadekar, and Avinash Mathews, came together to launch this self-empowering initiative, CEDE, which provides opportunities in education and employment to those belonging to the marginalized communities in India with special focus on Dalits, Adivasis, Other Backward Classes, and Indigenous communities.² One of the laudable objectives of CEDE is to increase the representation of the marginalized communities in the legal profession in India.

It is the last-mentioned endeavour that has prompted the choice of the topic for today’s lecture. The many years of active practice as a litigator provided me with an opportunity to study the legal services delivery system from close quarters. Being a lawyer on the panel of the Supreme Court Legal Services Committee for close to 15 years, a member of the Committee for two terms, and an *amicus curiae* in a number of cases involving public interest and human rights, helped me understand the complexity of the issues that require to be addressed while discussing the theme of access to justice.

Representing many of the marginalised groups in Court made me ponder over questions for which there were no easy answers then. I doubt it is easier now, although the complexity of the issues is better acknowledged in the empirical and research work done in the past few years on the working of the Indian legal system. One such study is the report published in October 2021 by the American Bar Association Centre for Human Rights on “Dalit Justice Defenders in India” (American Bar Association, 2021, Chapter III). I will have occasion to refer to it later in this talk.

I seek to briefly set out what I propose to speak on. In the first part of the talk, I wish to add to our understanding of whom we consider to be a person in need of legal services and in that context whom we understand to be a ‘marginalised’ person. Next, I wish to focus on the barriers that a marginalised person encounters in the legal system and how the system has responded to the problem. I ask: Can we really understand what it means to be a marginalised person facing the barriers of the system? Third, and this is an important part of the talk, the challenges faced by those who seek to represent the marginalised or espouse their causes. The final part of the talk will dwell on how we should be approaching the challenges thrown up in the process of representing the marginalised.

²CEDE (Community for the Eradication of Discrimination in Education and Employment), <https://www.cede.co.in/home>

I. Who are ‘Marginalized’ in Justice?

At a very basic level, every person denied justice in the broadest sense of the term, and who has to perforce engage with the legal system for redressal, is in need of legal services. The Indian Constitution acknowledges persons who by birth, descent, caste, and class have been denied justice over generations.³ It envisages the State coming up with affirmative action programmes and policies to redress such historic injustices.⁴ These include those belonging to the Scheduled Castes (SC)/ Dalits, and Scheduled Tribes (ST)/ Adivasis, socially and educationally disadvantaged classes, economically deprived classes and a whole host of others including religious minorities, sexual minorities, differently abled, and children in conflict with the law. Then there are ‘status offenders’ like sex workers,⁵ vagrants,⁶ mentally ill,⁷ and many others whose very existence and every activity is criminalised and therefore very often find themselves on the ‘wrong’ side of the law. Thus begging,⁸ street dwelling,⁹ prostitution,¹⁰ wandering of mentally ill persons¹¹ and vagrants¹² are all treated as law-and-order problems and dealt with in the criminal justice system. It is a matter for concern that at least 20 states in India still have anti-beggary criminal laws (Scroll, 2017). Only in Delhi (*Harsh Mander & Anr v. Union of India*, AIR 2018 Del 188) and J&K (*Suhail Rashid Bhat v. State of Jammu & Kashmir* 2019 SCC J&K 869) have the laws been struck down by judicial verdicts. Then there are the de-notified tribes¹³ who have, for long, been the victims of police atrocities. Those coming in conflict with the law in these situations

³Constitution of India 1950, art. 15. Article 15 of the Indian Constitution recognizes and secures the citizens from discrimination on grounds of religion, race, caste sex or place of birth.

⁴Constitution of India 1950, art. 38. Article 38 of the Indian Constitution recognizes that the importance of state in providing social, political and economic justice to its citizens.

⁵While the term sex workers are not defined, the term prostitute is referenced to the act of prostitution mentioned in Section 2(f) of the Immoral Traffic (Prevention) Act, 1956. Section 2(f) defines prostitution as any ‘means for which the sexual exploitation or abuse of persons for commercial purposes or for consideration in money or in any other kind. It describes “prostitute” to be construed accordingly.

⁶The Bengal Vagrancy Act, 1943 describes ‘vagrant’ as a person found asking for alms in any public place or wandering about or remaining in any public place in such condition or manner as makes it likely that such person exists by asking for alms but does not include a person collecting money or asking for food or gifts for a prescribed purpose.

⁷Mental Illness is defined in Section 2(s) of the Mental Healthcare Act, 2017.

⁸Currently 20 state legislations criminalize begging and provides incarceration for those found to be begging. Some of these are ‘The Andhra Pradesh Prevention of Beggary Act, 1977’, ‘The Assam Prevention of Begging Act, 1964’ and ‘The Bihar Prevention of Begging Act, 1951.’

⁹*Id* at 3. Immoral Traffic (Prevention) Act, 1956, s. 2(f)

¹⁰Immoral Traffic (Prevention) Act, 1956, s. 2(f). Section 2(f) defines prostitution as any ‘means for which the sexual exploitation or abuse of persons for commercial purposes or for consideration in money or in any other kind.

¹¹*Id* at 5. Mental Healthcare Act, 2017, s. 100

¹²*Id.*, at 4.

¹³The tribes that were mentioned in the Criminal Tribes Act, 1871 were required to register with the local magistrate as per Section 8 of the said Act with any such required information. If such information was not specified as per notice mentioned in Section 9, such members of the tribes

are invariably those below the poverty line and a 'high risk group' for whom legal aid is an absolute necessity. They are to be acknowledged as unwitting consumers of legal services.

There is also problem with excluding certain categories of persons from the ambit of legal services. Early legal aid schemes statutorily sought to disqualify those arraigned in cases involving offences under the law prohibiting gambling, consumption of alcohol or the offences of defamation and adultery from receiving legal aid (Muralidhar, 2004, pp. 50, 60). Under Article 22 (3) (b) of the Constitution of India, the right available to every person who is arrested, to consult and be defended by a legal practitioner of his choice, is not available to a person who is arrested or detained under any law providing for preventive detention.¹⁴ Consistent with this bar, S.11 (4) of the National Security Act, 1980¹⁵ and S.8 (e) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974¹⁶ bar the right of a detenu to legal representation in proceedings before the Advisory Board which examines the need for continuing the detention. This to some extent has been addressed by Section 12 of the Legal Services Authorities Act, 1987 (LSAA), in terms of which every person who is in custody is entitled to legal aid. No exception is made for cases in which custody is by way of preventive detention. And yet, under Section 13 LSAA,¹⁷ a legal aid functionary could refuse legal services in a criminal case on the ground that no prima facie case exists. Then we have the pernicious prospect of a bar association resolving that no member lawyer will defend a certain kind of 'accused': a person accused of committing what is termed a terrorist act (Press Trust of India, 2008). This despite the fact that the Supreme Court has outlawed it¹⁸ (Press Trust of India, 2013).

could be penalized under provisions of the Indian Penal Code, 1860 This was replaced with Habitual Offenders Act, 1952 that de-notified these tribes of their criminality.

¹⁴Article 22 (3) is an exception to the provisions mentioned prior to it in Clauses (1) and (2) that protect the persons from arbitrary arrest and detention. Article 22(3)(b) mentions that such provisions are *not applicable to any person who is arrested or detained under any law providing for preventive detention.*

¹⁵Section 11(4) of the National Security Act, 1980 describes the procedure for advisory boards that "*shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board; and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.*"

¹⁶S.8 (e) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 refers to the advisory boards mentioned sub-clause (a) of clause (4), and sub-clause (c) of clause (7), of Article 22 of the Constitution that "*a person against whom an order of detention has been made under this Act shall not be entitled to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential;*"

¹⁷Section 13(1) of the Legal Service Authorities Act, 1987 describes the criteria for entitlement of legal services. The provision mentions that '*persons who satisfy all or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has aprima facie case to prosecute or to defend.*'

¹⁸A.S. Mohammed Rafi Vs State of Tamil Nadu AIR 2011 SC 308. The court in the following case opined: '*It is against the great traditions of the Bar which has always stood up for*

The Indian criminal justice system provides, for those willing to see, a stark depiction of the intersection of law and poverty. Prof. Upendra Baxi states that the words ‘poverty’ and ‘poor’ suggest the passivity of the ‘poor’ (Baxi, 1988, p. 8). “Everything about the ‘poor’ and ‘poverty’”, he says, “is defined in terms of a lack: powerlessness, apathy, disorganization, alienation and anomie are some of the major attributes we use to define and describe the ‘poor’. This cluster of attributes define the ‘culture of poverty’ which is a culture of multiple disabilities, and lacks, transmitted across generations” (ibid). Noted scholar Barbara Harris White prefers the term ‘destitution’ and its myriad forms to describe what those in poverty experience. She describes ‘economic destitution’ as “having nothing”; ‘social destitution’ as “being nothing” and “political and law induced destitution” as “having no rights and being wrong”; each of which results in denial of ‘personhood’ or ‘full citizenship’ (2002, p. 86).

While tabling the final draft of the Indian Constitution before the Constituent Assembly on 25 November 1949, Dr. Ambedkar reminded everyone that: “On the social plane, we have in India a society based on the principle of graded inequality. We have a society in which there are some who have immense wealth as against many who live in abject poverty” (Ambedkar, 1948). That scenario continues to plague Indian society even seven decades thereafter. He was also prophetic that despite independence, we could not call ourselves truly democratic unless we ensured ‘social democracy’. He was not sanguine about this. He prophesied that “In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value” (Ambedkar, 1948). We are yet to dismantle the structures that marginalise a sizeable section of our population. Thus, we still have many among us who are engaged in manual scavenging, sewer cleaning, rag picking and in forced labour or begar, doing all our ‘dirty work’ at the cost of their dignity and right to life.

And then, poverty need not be understood only in economic terms. As the Allen Committee that was commissioned by Robert Kennedy, then the Attorney General, in 1960s in the USA to study poverty and the criminal justice system observed, poverty is also a “functional incapacity to obtain in adequate measure the representation and services required by issues, whenever and wherever they appear” (Attorney General’s Committee, 1963). Thus, a married woman belonging to the higher or middle-income group who is a victim of domestic violence and finding herself incarcerated in her marital home in an upper-class neighbourhood may still be deprived of legal services. The definition of ‘marginalized’ it would seem is thus not as simple as one might want to believe it to be. It is thus entirely possible that a person in India on account of her social or economic disadvantage is denied legal services. We may be creating a set of ‘social’ and ‘economic’ outcasts through law.

defending persons accused for a crime. Such a resolution is, in fact, a disgrace to the legal community. We declare that all such resolutions of Bar Associations in India are null and void and the right minded lawyers should ignore and defy such resolutions if they want democracy and rule of law to be upheld in this country. It is the duty of a lawyer to defend no matter what the consequences, and a lawyer who refuses to do so is not following the message of the Gita’;

II. Barriers for the Marginalized

The ‘marginalised’ enter the legal system in a variety of ways, very often involuntarily. They come in as victims of crime—crimes against humanity, mass crimes, hate crimes, caste (National Crime Records Bureau, 2020a, p. 34) and communal crimes (NCRB, 2020b, p. 33) and atrocities—as witnesses to crimes and atrocities, as complainants, as victims of forcible evictions, of neglect, of poverty, of natural and man-made disasters, of human conflicts including caste and communal riots. And of course, they come in as persons suspected of committing crimes. Twenty one per cent of the undertrial population of 3.72 lakhs (NCRB, 2020c, p. 68) and 21 per cent of the convict population of 1.13 lakhs belong to the SC. 37.1 per cent of the convicts and 34.3 per cent of the undertrials belong to the OBCs (NCRB, 2020d, p. 64). The corresponding percentages for Muslims is 17.4 per cent and 19.5 per cent respectively (NCRB, 2020e, pp. 63 and 67). And yet, these are the persons who are likely to find it difficult to come forward to fight for their rights.

Again, to quote Dr. Ambedkar:

Ask those who are unemployed whether what are called Fundamental Rights are of any value to them. If a person who is unemployed is offered a choice between a job of some sort, with some sort of wages, with no fixed hours of labour and with an interdict on joining a union and the exercise of his right to freedom of speech, association, religion, etc., can there be any doubt as to what his choice will be. How can it be otherwise? The fear of starvation, the fear of losing a house, the fear of losing savings if any, the fear of being compelled to take children away from school, the fear of having to be a burden on public charity, the fear of having to be burned or buried at public cost are factors too strong to permit a man to stand out for his Fundamental Rights. The unemployed are thus compelled to relinquish their Fundamental Rights for the sake of securing the privilege to work and to subsist (Ambedkar, 1947, pp. 409–410).

The formal legal system in India is a legacy of the British legal system. For many a ‘marginalised’ person, navigating the formal legal system is a nightmare. Law Professor Stephen Wexler is fairly accurate when he says: “Poverty creates an abrasive interface with society; poor people are always bumping into sharp legal things” (Wexler, 1970, p. 1050). There are many barriers to accessing justice that a marginalised person faces. The laws, rules and processes are mystifying and befuddling even for an educated, literate person. The laws are themselves structured to discriminate against the poor. Specific examples are the anti-beggary laws that criminalise poverty,¹⁹ the Immoral Traffic Prevention Act that criminalises sex

¹⁹*Id.*, at 6. Other laws also include ‘The Haryana Prevention of Begging Act, 1971’, ‘The Himachal Pradesh Prevention of Begging Act, 1979 and ‘The Karnataka Prevention of Begging Act, 1975’

work,²⁰ the juvenile justice law that delivers the street child into the arms of the law²¹, and even the municipal laws that criminalise acts of encroachment of public spaces²² by street dwelling homeless persons and hawkers. The system works differently for the poor. The Beggars Courts, the Juvenile Justice Boards,²³ and the Mahila Magistrate Courts²⁴ are often the first points of encounter for the poor with the legal system. A visit to any of them in a metropolis in India will bear out the truism that the system works unequally for the poor and the rich. Many undertrials continue to remain in jail despite grant of bail because of their inability to arrange surety bonds (Singh, 2018).

For long, sexual minorities and *trans* persons have had to live in fear of the criminal law processes. Even after Section 377 IPC²⁵ was read down, first by the Delhi High Court in *Naz Foundation (Naz Foundation v Government of NCT of Delhi & Ors)* (2009) 111 DRJ 1 (DB) and later by the Supreme Court in *Navtej Johar (Navtej Singh Johar v. Union of India)* AIR 2018 SC 4321, and even after the declaratory judgment of the Supreme Court in *NALSA (National Legal Services Authority v. Union of India & Ors)* AIR 2014 SC 1863 in 2014 affirming the full citizenship and personhood of trans persons, it is a struggle on the ground for sexual minorities to cope with their daily lives. The changes it seems are happening ‘with all deliberate speed’,²⁶ a phrase that translates as ‘very gradually’.

To tackle the inequality and inequity of the formal legal system, we have institutionalised the delivery of legal services through the LSAA.²⁷ We have a four-

²⁰Immoral Traffic Prevention Act 1987, s.4. The provision mentions the punishment for those living on the earning of prostitution as ‘*any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.*’

²¹Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(14)(ii). Section 2(14) (ii) describes that a ‘child in need of care and protection’ is a *child who is found begging or living on the street*’.

²²Delhi Municipal Corporation Act, 1957

²³*Id.*, at 20, s.4 describes that Juvenile Justice Boards shall be established in every district responsible for *exercising the powers and discharging its functions relating to children in conflict with law under this Act*.

²⁴Mahila Magistrate Courts are courts that deal exclusively with cases concerning offences against women in India. While at the sessions level they deal with cases concerning prostitution, kidnapping, rape and cruelty, these special courts at metropolitan level also deal with cases of domestic violence.

²⁵Indian Penal Code, (1860), s. 377. The provision criminalised homosexuality as it mentioned ‘*whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*’

²⁶*Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). The court concluded its judgement on desegregation to the lower federal courts to ‘*enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases.*’

²⁷*Id.*, at 16

tier mechanism with the National Legal Services Authority (NALSA),²⁸ the State Legal Services Authorities,²⁹ the District Legal Service Authorities³⁰ and the Taluk Committees.³¹ We also have a Legal Service Committee in every High Court. We have attempted providing not just legal representation but legal services as well.³² Both at the pre-litigation and post litigation stages.³³ We have schemes that are meant to provide a complainant, a victim and a suspect legal assistance at every stage of the criminal justice process. And yet as Justice U U Lalit, Executive Chairperson of NALSA noted recently, “Only 1% of the total criminal cases heard in the courts of law get legal aid from the offices of Legal Services Authorities across the country” (Buradikatti, 2021). The two reasons he identified were (i) lack of awareness and (ii) more disturbingly “they don’t perhaps have confidence in the set-up of legal aid” (Ray, 2021).

The fact remains that quality of legal aid is a concern. The marginalised who are the recipient of legal services do not really have a choice. This is a paradox because Article 22 talks of guaranteeing a person arrested with a lawyer of her choice.³⁴

In the Constituent Assembly, while debating the wording of Article 15A (later to be Article 22 in the final draft), Dr. Ambedkar adverted to the suggestions made in regard to the right of an accused person to consult a legal practitioner. With a view to removing ambiguity, he said: “I am prepared to add after the words ‘consult’, the words ‘and be defended by a legal practitioner’ so that there would be the right to consult and also the right to be defended” (CAD, September 15, 1949). He also explained that the words “legal practitioner of his choice” had been deliberately used “because we do not want the government of the day to foist upon an accused a counsel whom the Government may think fit to appear in his case because the accused persons may not have confidence in him.”³⁵

This lack of confidence in the legal aid lawyer is a reflection of the general approach to ‘welfare services’ by the providers, and the perception that this is an act

²⁸The Legal Service Authorities Act 1987, s.3. Section 3 mentions about the constitution of National Legal Service Authority to exercise all powers and necessary functions that are “conferred on the Central Authority under the Act.”

²⁹The Legal Service Authorities Act 1987, s.6. Section 6 mentions about the constitution of State Legal Services Authority to fulfill all functions and exercise all powers “conferred on or assigned to the State Authority” under the said Act.

³⁰The Legal Service Authorities Act 1987, s.9. Section 9 mentions regarding the constitution of District Legal Services Authority to exercise all powers and necessary functions that are “conferred on or assigned to the District Authority”

³¹The Legal Service Authorities Act 1987, s.11A. Section 11A mentions regarding the constitution of The Taluk Legal Services Committee for every Taluk or mandal.

³²The Legal Service Authorities Act 1987, s.4. Section 4 describes the various functions of the National Legal Services Authority in undertaking various schemes and establishing policies to provide legal aid, including but not limited to allocation of funds, organizing of legal aid camps, settlement of disputes.

³³The Legal Service Authorities Act 1987, Chapter VIA. Chapter VIA recognizes the pre-litigation conciliation and the establishment and procedures for Permanent Lok Adalats.

³⁴Constitution of India 1950, Art. 22.

³⁵*Id.*, at 21

of ‘charity’ rather than the right of the person in receipt of such services. It impinges on the dignity of the person. I call it the ‘ration shop syndrome’. The poor believe that if you are getting any service or benefit for free, or it is substantially subsidised, then you cannot demand quality. Beggars can’t be choosers is the stoic response that keeps the poor going. In a critical study of the public defender system in the USA, Charles Silberman found that defendants, who were represented by legal aid lawyers, said ‘He’s not my lawyer, he is the legal aid’, and that in the court “when judges ask who the lawyer is in the case at hand, legal aid lawyers typically answer, ‘I’m standing up for this case,’ not ‘I’m representing this client,’ let alone ‘I’m representing Mr. Jones’” (Silberman, 1978).

The laws and the legal system also appear to work differently for the marginalised. Recently, a Supreme Court two-judge Bench of Justice DY Chandrachud and Justice B V Nagarathna noted that several members of the SC/ST community “face insurmountable hurdles in accessing justice from the stage of filing the complaint to the conclusion of the trial” and that they “specifically suffer on account of procedural lapses in the criminal justice system” (*Hariram Bhambhi v. Satyanarayan & Anr* AIR 2021 SC 5610). The press report of the hearing (that appeared in the Hindustan Times Delhi edition of 31 October 2021) quoted the Bench as saying that due to the fear of retribution from members of upper caste groups, ignorance, or police apathy, many SC/ST victims do not register complaints in the first place and even if they do “the victims and witnesses are vulnerable to intimidation, violence, and social and economic boycott” (Anand, 2021; Jyoti, 2021; Bisht, 2020). The Bench is reported to have noted that, “This results in low conviction rates under the SC/ST Act, giving rise to the erroneous perception that cases registered under the Act are false and that it is being misused. On the contrary, the reality is that many acquittals are a result of improper investigation and prosecution of crime, leading to insufficient evidence” (Anand, 2021; Jyoti, 2021; Bisht, 2020).

Indeed, the statistics put out by the NCRB on the conviction rates in SC/ST cases bear out these remarks. In 2020, the pendency of trials of offences under the SC and ST Act was 96.5 per cent (Jayati, 2021). Only 216 cases from the 50,291 crimes against SCs in 2020 resulted in convictions. 3,192 cases resulted in acquittals (Jayati, 2021).

The above scenario is equally true in cases of communal riots and mass crimes. Where the trial is able to be insulated from the local pressures, there is a greater chance of reaching the goal of justice. Illustratively, these would include the cases of burning of Dalit households in Mirchpur village in Haryana (where the trial was shifted to Delhi) (Hindustan Times, 2018a; Singh, 2018), or mass killings of Muslims in Hashimpura in UP by the PAC (again the trial was shifted to Delhi) (Hindustan Times, 2018b) or the case of rape and murder of a Bakkerwal girl in Kathua in Jammu (the trial was shifted to Pathankot) (Mahapatra, 2018) or the Gujarat riot cases (Best Bakery and Bilkis Bano cases, both shifted to Maharashtra) (Press Trust of India, 2004). In each of these instances, the trial itself had to be transferred to different states since there was no assured witness protection programme for the marginalised, who became soft targets for intimidation.

Then within the formal legal system there are the problems posed by ‘hidden’ and other ‘costs’ that have to be inevitably borne by recipients of legal aid. Here I have the unedifying task of quoting my own work “Law, Poverty and Legal Aid: Access to Criminal Justice”:

One disincentive for a person to avail of legal aid offered is the problem of uncompensated costs that have to be incurred. Legal aid schemes do not account for the ‘hidden’ costs incurred by those brought involuntarily into the system either as victims or as accused. While the legal aid programme may pay for court fees, cost of legal representation, obtaining certified copies and the like, it usually does not account for the bribes paid to the court staff, the extra fees to the legal aid lawyer, the cost of transport to the court, the bribes paid to the policemen for obtaining documents, copies of depositions and the like or to prison officials for small favours. Legal aid beneficiaries do not get services for ‘free’ after all. At the end of a long litigation, where the person emerges innocent, he is not awarded the costs of the litigation. Thus, the amount of time and money spent on establishing innocence remains unrecoverable and non-compensable. Equally it is a loss to the victim of the crime and to the taxpayer whose money has gone into funding the entire prosecution exercise. (Muralidhar, 2004)

Law Professor Deborah Rhodes (2009) in her piece titled “Whatever Happened to Access to Justice” has this to say:

...not all barriers to justice are in the judicial system; some are part of a larger problem of economic disadvantage (Massachusetts: Access to Justice Commission, 2007). Many factors affect the justness of the legal process apart from the adequacy of legal assistance: the substance of legal rights and remedies; the structure of legal processes; the attitudes of judges and court personnel; and the resources, expertise, and incentives of the parties (Engler, 2006). On almost all of those dimensions, as law professor Marc Galanter famously put it the “ ‘haves’ come out ahead” (Galanter, 1974).

Studies abroad have shown, and this is true to a large extent in India as well, that there is a parallel system involving the police and the mafia that derives benefits from the activities of criminalizing prostitution, beggary, and other activities of the marginalised (Frey, et al., 1981, pp. 239–249). There exists a system of pre-paid legal services for those involved in organized crime rackets and other criminalized activities (Campana, 2017). Professional criminals are able to engage lawyers and obtain bail for those made to beg by them. They are also able to arrange sureties and professional bonds. In the context of sex work, the recent Sanjay Leela Bhansali film ‘Gangubhai Kathiawadi’ (Bhansali, 2022) starring Alia Bhat focuses its lens on the nexus between the brothel owners, the political class and the police. This is a vicious quagmire that the marginalised are unable to liberate themselves from.

Are the Alternate Dispute Resolution (ADR) systems within the formal legal systems a solution to the problems of the marginalised? As they presently stand, the

options of mediation and arbitration do not seem to be available to the poorest among the litigants particularly since they find themselves ensnared in the criminal justice processes or face forced evictions, homelessness, displacement, and a myriad issues in confronting the State. They, however, do feature largely in Lok Adalats with their claims for either motor vehicle or land acquisition compensation and are asked to 'settle for less' as it were. Legal scholars Marc Galanter and Jayanth Krishnan term this phenomenon as 'bread for the poor' (Galanter & Krishnan, 2004, p. 789). The marginalised also feature in 'jail adalats' where they have the Hobson's choice of longer periods of incarceration as opposed to admitting to guilt in petty offences for a premature release but with the tag of a 'previous conviction' (Paliath, 2020; Commonwealth Human Rights Initiative, 2009). There do not appear to be dignified spaces rendering complete justice to the marginalised litigants in the ADR arena, as yet. That may be an area that needs further exploration.

Non-formal systems are perhaps the first choice for the rural and urban poor, deterred as they are by the prospect of having to engage with the formal system. But here again while the caste panchayats might offer solution to some civil disputes, it is doubtful that they are truly representative institutions when it comes to some of the critical issues concerning the marginalised (Inabanathan & Sivanna, 2010). Particularly, when it comes to cases of crimes against women, caste-based discrimination and violence, cases of inter-caste runaway couples, the track record of the informal systems has not been encouraging.³⁶ For the marginalised, traversing the legal system whether formal, alternate or non-formal, is a daunting task, full of uncertainties and perils.

III. Challenges in Representing the Marginalised

I will now explore what representing the marginalised in Courts entails. That takes me to understanding how the 'Bar' is organised. Is the Bar democratic? Is it a place of 'equal opportunity'? Is it diverse? Or does it mirror to a large extent the social and economic inequalities that are ubiquitous in Indian society, and home to the biases that plague social life (Ahmed & Suryam, 2021).

The study on "India's Grand Advocates" by Marc Galanter and Nick Robinson is fairly well known in legal circles (Galanter & Robinson, 2013). These two legal scholars have stated that "despite repeated inquiries" they could not identify any Scheduled Castes, Scheduled Tribes and Other Backward Class advocates, who are regarded as part of the elite strata of lawyers (Galanter & Robinson, 2013, p. 16). I suspect that the legal service institutions may not be faring any better. Do we know how

³⁶In *Re vs. Indian Woman Says Gang-raped on Orders of Village Court* Published in *Business & Financial News* Dated 23.01.2014, (2014) 4 SCC 786. Also note, *Shakti Vahini v Union of India* (2018) 3 SCC 1, the court issuing directions to state governments and law enforcements in prevent honour killings observed that "*Once the fundamental right is inherent in a person, the intolerant groups who subscribe to the view of superiority class complex or higher clan cannot scuttle the right of a person by leaning on any kind of philosophy, moral or social, or self-proclaimed elevation*"

many of the legal aid panel advocates are Dalits? What percentage of the arbitrators, mediators, counsellors, conciliators do they constitute?

The study I referred to, to begin with, on ‘Dalit Justice Defenders in India’ makes an important contribution to our understanding of the lack of diversity in the Bar (ABA, 2021, p. 12). After conducting interviews with lawyers, former and current judges, academics and others that in the High Courts, the study concludes that “the bar is dominated by lawyers of upper castes and well to do families with a network of connections” (ABA, 2021, p. 15). Some of the respondents admitted that “in lower Courts, caste plays a role in getting clients” (ABA, 2021, p. 16). One of the conclusions drawn from the interviews conducted was that “structure of the legal profession is based on the ability of an individual to secure references, resources and have a network, all of which are difficult in an environment with caste discrimination.” The study also reveals very tellingly that Bar Associations have historically been dominated by upper class males (Jain & Tripathy, 2020, p. 11). The lawyers belonging to marginalized have experienced indirect discrimination, being asked to perform relatively unskilled tasks in law offices. There is also tendency to type-caste lawyers from Dalit and other marginal groups. A woman lawyer, who described herself as “the first generation bahun lawyer” without any caste networks of financial support, found the journey to be a “lonely experience” and found the attitude of senior counsel as patronizing and loaded with notions of charity (Jain & Tripathy, 2020 p. 21). She was treated as “a token or diversity candidate” and importantly, she stated that “the dignity of being a colleague was missing.” The study found that lawyers belonging to Dalit and Adivasi communities working on human rights cases risk being labelled as ‘Maoist’ or ‘Naxalite lawyers’ (Jain & Tripathy, 2020 p. 21).

The same study mentions a positive development that has taken place in the form of the National Dalit Movement for Justice (NDMJ) which has brought Dalit and Adivasi Advocates together on a platform for intervening in Dalit atrocities cases in Court (NDMJ, 2020). The NDMJ claims to have trained 2000 lawyers across the country so far (NDMJ, 2020, p. 22). I am aware that the Centre for Social Justice in Ahmedabad too has done considerable work in this area. These are not one-off initiatives. Several individual lawyers and smaller groups and organisations are confronting these challenges on a daily basis.³⁷ However, all of this is not yet enough. The legal profession as it is presently structured does not necessarily provide a level playing field to all those entering into the system in various capacities: as a litigant, as a suspect in a criminal case, as a victim of crime, as a person denied justice, as a witness and accused, as a lawyer and even as a judge. The legal profession to a large extent mirrors the inequalities and the biases of the society.

The cab rank rule³⁸ by which the legal profession purportedly operates, does not work for those who cannot afford cabs in the first place. The marginalised, to use a

³⁷Some of the organisations working on representation of Dalit, Adivasi and other marginalized communities are All India Dalit Mahila Adhikar Manch, Human Rights Law Network, All India Democratic Women Association, Lawyers Collective and Project 39A.

³⁸Cab rank rule oblige a lawyer to accept any cases appropriate to their experience in the field of practice void of the nature of case, identity of the client or any other factors that might

rough analogy, traverse the legal system by foot or in overcrowded buses or trains, very often at personal risk to their life and safety. The luxurious sedan that charges a higher tariff is largely out of reach, even when infrequently they do get a ‘token’ joy ride. Occasionally, you will have a top-notch senior lawyer do a case or two completely pro bono, and with positive outcomes (Sharma, 2009; Anand, 2019; Live Law, 2021). But for most other cases in the Indian subordinate courts, where the marginalised largely meet their destiny with choice less stoicism, the informal rules by which the Bar functions are dictated largely by a supply and demand situation: where competent lawyers are in short supply and therefore, they are in great demand. In almost every rung of the structured hierarchy of the legal profession, more than 80 per cent of the work is controlled by less than 20 per cent of the lawyers who are usually referred to as the ‘active practitioners’ of any Bar. These active practitioners would have their own class and caste biases in how they approach cases, in how they prioritise their work and how they treat their clients. More than a century ago, Gandhiji commented that the law courts in India are perhaps the most “extravagantly run” (Sharma, 2019; Gandhi, 1962). He noted that “several thousand rupees had been known to be to have been charged in India. There is something sinful in a system under which it is possible for a lawyer to earn from ₹ 50,000/- to ₹ 1,00,000/- per month. The legal practice is not – and ought not to be – a speculative business. The best legal minds must be available to the poorest at reasonable rates” (Hindustan Times, 2018b).

In a documentary titled ‘All Rise for your Honour’, the Director Sumit Khanna depicts the plight of an elderly rural woman trying to get an affidavit that she needs in a civil dispute, signed by her son who is lodged in a jail in Varanasi.³⁹ Even with the help of the film maker, and all of this on camera, a sum of ₹ 1500/- has to be spent just on getting the affidavit attested by a notary magistrate who travels with them to the jail to get the affidavit signed by the prisoner in his presence. All this only to be told later that it was not necessary at all. It is a telling commentary on the way the legal system in the courts is plagued by the ignorance of laws and procedures among lawyers, which works to the disadvantage of those already marginalized.

Self-representation, i.e. the litigant appearing in person, is not really an effective alternative. They often face the seemingly insurmountable barriers of legalese and court etiquette, which are tools of persuasion cultivated by the Bar over the years. On a lighter note, in an episode involving an elderly litigant appearing in person in court, during abstention from work by the bar, the judges interrupt his submissions saying: ‘Babuji, aap jo keh rahe hain, ham samajh nahi paa rahen hain. Aap vakil rakh lo’. To which the elderly litigant responds: “Kamaal hai, samajh aap ko nahi aa rahi hai aur vakil mujhe rakhna hai?”

discriminate against the client. This promotes access to justice and interest of the client by providing them an appropriate opportunity to be defended.

³⁹All Rise for your Honour, PBST India, *Youtube* <<https://www.youtube.com/watch?v=wmEVNo9ssG4>> accessed on 20th April 2022

But occasionally you do have the type of dedicated and conscientious lawyer that we saw Naseeruddin Shah play in Govind Nihalani's 'Aakrosh',⁴⁰ Rajkumar Rao play in Hansal Mehta's 'Shahid',⁴¹ and southern star Surya play Chandru in Gnanavel's 'Jai Bhim'.⁴² The lawyers in those stories are the ones that we must get the young entrants to the Bar have as role models. And, among the younger generation of lawyers that I see in Courts I do come across one or two that have that potential.

Such lawyers at present are a small number and in great demand. They too are stretched beyond their resources, and at times this dilutes their efficacy. Unfortunately, there is a tendency of late to view appearing for the marginalised as making a political choice. These decisions have the potential of marginalizing those representing the marginalized. They are not the high-flying ambitious career-oriented lawyers. They plug away at cases knowing that the system is weighted against their clients. The lawyer Vinay Vora (played by actor Vivek Gomber) in the Marathi film 'Court' by Chaitanya Tamahane is one such.⁴³ Yet, some of them who stand up for 'unpopular' causes that don't meet the approval of the dominant voices in society, face stiff resistance: they face threats to their lives, boycotts and expulsions by the Bar Associations, and even unwanted intrusions by law enforcement agencies. However, their presence in the court does lend legitimacy to the legal system which is essential for upholding the rule of law.

There are also the civil society groups that have for many years been working with the marginalised—with the homeless,⁴⁴ the sex workers,⁴⁵ the children in conflict with the law,⁴⁶ the slum dwellers,⁴⁷ the rag pickers,⁴⁸ the manual scavengers⁴⁹ and sewer cleaners—helping them organise, question state and police excesses, demand protection and enforcement of rights. There are also para legal workers that help the marginalised avoid or exit institutionalisation by their interventions. The system needs all of them for its legitimacy. The marginalised need them for their survival. A larger and less intimidating space has to be provided for these non-state players in the system.

⁴⁰Govind Nihalani's 'Aakrosh' (1980)

⁴¹Hansal Mehta's 'Shahid' (2012)

⁴²TJ Gnanavel 'Jai Bhim' (2021)

⁴³Chaitanya Tamahane 'Court' (2014)

⁴⁴Some civil society organizations working for the homeless persons include Aashray Adhikar Abhiyan, Rainbow Homes, Butterflies and Udayan Care.

⁴⁵Some civil society organizations working with the sex workers are Durbar Mahila Samanwaya Committee, Kat-Katha and Saheli Sangh.

⁴⁶Healing Dove Foundation supports rehabilitation of juvenile delinquents into the mainstream society. <https://healingdovefoundation.org>

⁴⁷Some of the civil society organizations supporting slum dwellers are Youth for Unity and Voluntary Action (YUVA) and Humane Universal Good Deeds Network. Other organizations also include Center for Sustainable Development (Nagpur), Uday Foundation, Goonj and Give India.

⁴⁸Some of the civil society organizations supporting the rag pickers are Arunodhaya, Atmashakti Trust and Toxics Link.

⁴⁹Some of the civil society organizations working with manual scavengers-Safai Karmachari Andolan, Association for Rural and Urban Needy (ARUN), Sulabh International Social Service Organisation, and Jan Sahas.

IV. Addressing the Challenges

Finally, I come to the question: How do we enable the marginalised to meet the challenges?

First, we need to acknowledge that the marginalised largely view the legal system as irrelevant to them as a tool of empowerment and survival. Their experience tells them that it operates to oppress, and that they have to devise ways of avoiding it rather than engage with it. Without fundamental systemic changes that enable erasing to some extent this negative perception of the legal system, and the legal profession in particular, mere changes in the system of legal services delivery by themselves may not entice greater engagement with the system, however promising the results may seem. It is bound to be viewed with suspicion. To begin with we need to revive the discussions around de-criminalising many of the survival activities of the poor including pavement dwelling, encroachment, hawking, begging, sex work. We have to act more on legal institutional reforms. For e.g., finding alternate, less coercive ways of running *nariniketans* (Singh, 2015), observation homes for boys and girls, beggars' homes instead of modelling them on the penal custodial institutions (Aidasani, 2021).

Prof. Deborah Rhodes highlights for us the kind of questions we might want to ask in our approach to reforming the legal services delivery system. "Should individuals be entitled to assistance on all matters where fundamental rights are at issue, or only where their claims seem meritorious? When should they receive lawyers' help, and when would other forms of aid be sufficient? How should legal aid providers allocate assistance between individual representation and collective impact work such as lobbying, organizing, and test-case litigation? And most important, how should those decisions be made?" (Rhodes, 2004).

Test-case litigation can be an effective tool for bringing about systemic changes. There are lessons to be learnt from the manner in which the civil rights movement in the USA went about litigating the issues of discrimination. Professor Charles Ogletree's seminal work titled *All Deliberate Speed* (Ogletree, Jr, 2005) describes in detail how the early work of test-case pioneer Prof. Charles Hamilton Houston for the NAACP⁵⁰ to seek parity in payment to white and black teachers in public schools, paved the way for later litigators like Thurgood Marshall, who went on to become a Judge of the Supreme Court of the USA, to bring forth simultaneously in a range of courts spread across states, cases concerning segregation in public transport, public facilities, universities, schools and so on. *Brown v. Board of Education* did not happen overnight.⁵¹ It was a culmination of many years of patient struggle and perseverance

⁵⁰National Association for Advancement of Colored People

⁵¹*Brown v. Board of Education* emerged from 5 cases concerning racial segregation in schools in the United States and clubbed as a national issue before the Supreme Court of the United States in 1952. These 5 cases argued before the representative state Court of Appeals were *Belton (Bulah) v. Gebhart* [1952, Delaware], *Bolling v. Sharpe* [1952, Washington D.C], *Briggs v. Elliott* [1952, South Carolina], *Davis v. County School Board* [1952, Virginia] and *Brown v. Board of Education* [1952, Kansas]. Out of the 5 cases, *Belton (Bulah)* case achieved substantial claim for the plaintiffs as it allowed the 11 school children to be admitted to all-white school.

with conviction and painstaking fact-gathering for presentation in the court. Basically, a lot of hard work. And then, there has been a constant struggle to get the tangible results of such test litigation realised in the succeeding years without diluting *Brown*. The follow up order in *Brown* that the US Supreme Court handed down in September 1955 (*Brown v. Board of Education* 349 U.S. 294 (1955)), one year after *Brown*, basically permitted the consequential changes of desegregation to be only gradually implemented. It used the phrase ‘with all deliberate speed.’ The NALSA judgment of the Supreme Court of India (*National Legal Services Authority v. Union of India & Ors* AIR 2014 SC 1863) that recognises the full citizenship and personhood of transgenders is another such test-litigation that is yet to witness the tangible effects on the ground. Prof. Ogletree himself spent a large part of his early professional life honing his lawyering skills with the Public Defender Service in Washington DC. He emphasises that if any system of Public Defender has to be effective, there can be no compromise on the quality of professional competence of its lawyers (Ogletree, Jr, 2005, p. 90). In more contemporary times, the pro bono work of lawyer Bryan Stevenson in the USA, devoting his energies to getting innocent black convicts released from death row is inspiring. In his book, *Just Mercy*, Bryan tells us how a conscientious lawyer handling cases of the marginalised needs to be emotionally and mentally strong, politically aware, professionally competent and be prepared to take on a hostile system with calm and fortitude (Stevenson, 2014).

How do we improve the quality of legal services here in India? To begin with, we need to attract the better if not the best available legal talent for legal services. Since fees is such an important incentive for a lawyer to take up a case, it is necessary to ensure that the fees paid to the legal aid counsel representing indigent accused, in criminal trials involving grave offences, is the same as is paid to the prosecutor. The fact is that there is no scarcity of financial resources with the legal services authorities. It is the distribution of the resources that needs paying attention to. Even if it is a salaried system, the salary must be commensurate with what the lawyers would usually and reasonably charge private clients.⁵² Here we cannot pick the high end of the tariff but the ‘mean’ to ensure that the legal aid lawyer does not lose out for taking up a legal aid case. To expect Senior lawyers to take up the cases as ‘pro bono’ would not be doing justice to the clients. They would always be made conscious that they are recipients of ‘charity’ or ‘beneficial treatment’ which does not respect their dignity and enable them to demand accountability from the counsel. For trials involving complex issues and tasks, the services of a combination of a senior and junior lawyer should be able to be offered.⁵³

⁵²National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, s. 8(12). The provision mentions minimum honorarium to be paid to retainer lawyers in different legal services committee. Further note ‘Recommendation of NALSA about minimum fee payable to panel lawyers’, <https://nalsa.gov.in/acts-rules/guidelines/minimum-fee-recommended-by-nalsa-for-panel-lawyers> accessed on 21st April 2022

⁵³Justice U.U. Lalit interview with Hindi Hindustan Shashi Shekhar and Shyam Suman noted in Good quality legal aid possible only if senior lawyers join outreach drive’: SC judge justice Uday U Lalit, *Hindustan Times* (November 14, 2021)<https://www.hindustantimes.com/india->

Second, and important, we need to ask how do we orient the lawyer to take up the cases of the marginalized? How do we get the lawyer to understand what it means to be a marginalised person having to navigate an intimidating and alienating legal system? Can we get the lawyer to truly understand how the marginalised person feels and thinks? How do we ensure that the legal aid lawyer is thoroughly professional in understanding all the nuances of the law and is able to match the opponent in terms of competency?

The legal aid lawyer would do well to remain aware that legal aid is not charity: it is the basic right of the marginalised. The consumers of legal services must be consulted at every stage of the case. They should be patiently listened to. They cannot be made to lose control over their case. They must have a say about the course of action or strategy to adopt. If pleadings are in English, and the client cannot understand that language, it has to be read over and explained in the language that they understand. Offering services pro bono or at state expense does not entitle the lawyer to make concessions and statements in Court, that do not correctly reflect the client's position or ends up compromising their position. It could be a political position, it could be a position on facts. At all times, the persons for whom one is representing must be kept in the loop and informed about everything that is happening in the Court. Nothing must be done in the Court without their consent. Also, there can be no room for cynicism. If the system appears broken, we are part of it and we need to do our bit to fix it. When the marginalised still have hopes of the system, lawyers who care can hardly afford to give up hope.

Last, to increase representation of the underprivileged and marginalized in the legal profession one has to begin early. One has to begin with law colleges. Initiatives like IDIA (Increasing Diversity by Increasing Awareness),⁵⁴ the brainchild of late Prof. Shamnad Basheer, are indeed welcome. The presence of the underprivileged in law colleges is by itself not enough. They need to be handheld through the law course and thereafter till they are placed with seasoned lawyers or law firms.⁵⁵ The Bar Council and Bar Associations need to emulate the IDIA model on a larger scale. There has to be mentoring of young lawyers belonging to marginalised groups by the more seasoned lawyers. The Bar Council of India can float a scheme offering stipends to promising young lawyers for the first two years of such mentorships, to help them find their feet in the profession.

There is much to be done. And it needs to be done now. We have the resources. We must find the will.

news/justice-u-u-lalit-interview-good-quality-legal-aid-possible-only-if-senior-lawyers-join-outreach-drive-101636828193113.html accessed on 21st April 2022

⁵⁴'Increasing Diversity by Increasing Access', <https://www.idialaw.org> accessed on 19th April 2022

⁵⁵'Increasing Diversity by Increasing Access offers mentorship opportunities to underprivileged law students and trains them with soft skills and access to internship opportunities, <https://www.idialaw.org/idia-programs/> accessed on 21st April 2022

Acknowledgement

The author acknowledges Mohd. Arsalan Ahmed, Aligarh Muslim University for his assistance in editing the article in the format required by the *CASTE: A Global Journal on Social Exclusion*.

The editors of *CASTE: A Global Journal on Social Exclusion* gratefully acknowledge the editing assistance of Prof. Anurag Bhaskar at Jindal Global Law School, Sonipat, and Disha Wadekar, independent advocate practicing in the Supreme Court of India.

References

- (2020a). Table 1A.4, IPC Crimes (Crime Head-wise & State/UT-wise) *Crime In India Report* (p. 34) National Crime Records Bureau, Ministry of Home Affairs. <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>
- (2020b). Table 1A.4, IPC Crimes (Crime Head-wise & State/UT-wise). *Crime In India Report* (p. 33). National Crime Records Bureau, Ministry of Home Affairs <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>,
- (2020c). Table 2.11D, *Prison Statistics India* (p. 68) National Crime Records Bureau, Ministry of Home Affairs https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf,
- (2020d) Table 2.10D, *Prison Statistics India* (Pg 64), National Crime Records Bureau, Ministry of Home Affairs https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf
- (2020e) Table 2.10C, *Prison Statistics India* (p. 63 and 67). National Crime Records Bureau, Ministry of Home Affairs https://ncrb.gov.in/sites/default/files/PSI_2020_as_on_27-12-2021_0.pdf
- Ahmed, Areeb Uddin & Suryam, Shagun (2021, July 21). Men's club that decides for everybody, Bar & Bench. Retrieved on 21 April 2022 <https://www.barandbench.com/columns/only-204-of-state-bar-council-representatives-across-india-are-women>
- Aidasani, Priyanka (2021, June 16). Stories from beggar's home: How the Bombay Prevention of Begging Act Of 1959 criminalises begging in Mumbai. Retrieved on 21 April 2022 <https://thebastion.co.in/covid-19/stories-from-beggars-home-how-the-bombay-prevention-of-begging-act-of-1959-criminalises-begging-in-mumbai/>
- Ambedkar, B.R. (1947). States and Minorities. *Dr Babasaheb Ambedkar: Writings and Speeches*, Vol. 1.
- Ambedkar, B.R. (1948, November 4). *Dr. B.R. Ambedkar's speech introducing the Draft Constitution*. Constituent Assembly. Last retrieved on 19 April 2022 https://prasarbharati.gov.in/whatsnew/whatsnew_653363.pdf
- American Bar Association, Center for Human Rights (2021). *Challenges for Dalits in South Asia Legal Community*. Chapter III: Dalit Justice Defenders in India.
- Anand, Apoorva (2019, April 25). Bilkis Bano's fight for justice, dignity and equality keeps alive the idea of citizenship, *The Indian Express*. <https://indianexpress.com/article/opinion/columns/bilkis-bano-gangrape-case-godhra-riots-supreme-court-5693109/>
- Anand, Utkarsh (2021, October 30). Fewer convictions in SC/ST cases due to 'shoddy investigations': Supreme Court. *The Hindustan Times*. <https://www.hindustantimes.com/india-news/fewer-convictions-in-sc-st-cases-due-to-shoddy-investigations-supreme-court-101635531834261.html> Retrieved on 19 April 2022.

- Attorney General's Committee. (1963, February 25). *Poverty and administration of federal criminal justice*. Submitted to the Honorable Robert F. Kennedy, Attorney General of the United States. Retrieved on 19 April 2022 <https://cjastudy.fd.org/sites/default/files/public-resources/Allen%20Committee%20Report%20%281963%29.pdf>
- Baxi, Upendra (1988). *Law and poverty: Critical essays*. Bombay: N.M. Tripathi.
- Bhansali, Sanjay Leela (2022) 'Gangubhai Kathiawadi'.
- Buradikatti, Kumar (2021, October 24). Legal aid to the poor does not mean poor legal aid: Justice Lalit. *The Hindu*. <https://www.thehindu.com/news/national/karnataka/legal-aid-to-the-poor-does-not-mean-poor-legal-aid-justice-lalit/article37148448.ece>
- Campana, Paolo (2017, July). *Organized crime and protection rackets*, The Oxford Handbook of Offender Decision Making.
- Commonwealth Human Rights Initiative (2009) *Liberty at the cost of Innocence: A report on jail adalats in India*.
- Constituent Assembly Debates. Vol. IX (15th September 1949). Retrieved last on April 23, 2021 https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2022
- Engler, Russell (2006) Shaping a context-based civil Gideon from the dynamics of social change, *Temple Political & Civil Rights Law Review*, Vol. 15.
- Frey, J.H.; Reichert L.R.; and Russell, K.V. (1981, July-September). Prostitution, business and police: The maintenance of an illegal economy. *Police Journal*. Volume: 54 Issue: 3.
- Galanter, Marc (1974). Why the "haves" come out ahead: Speculations on the limits of legal change, *Law and Society Review*, Volume 9:1.
- Galanter, Marc & Krishnan, Jayanth (2004). Bread for the poor: Access to justice and the rights of the needy in India. *Hastings Law Journal*, Vol. 55.
- Galanter, Marc & Robinson, Nick, (2013). India's grand advocates: A legal elite flourishing in the era of globalization. *International Journal of the Legal Profession*, Vol. 20, No. 3.
- Gandhi, Mahatma (1962, October). *The law and the lawyers*. Ahmedabad: Navajivan Publishing House.
- Hindustan Times (2018a, August 24). Mirchpur Dalit killings: Delhi high court convicts 33, sentences 12 to life terms. *Hindustan Times*, <https://www.hindustantimes.com/india-news/mirchpur-dalit-killings-delhi-high-court-overturms-acquittal-of-20-accused/storymQ8YmRRflrIDMVLxqECJTK.html>;
- Hindustan Times (2018b, November 01). Families of Hashimpura mass murder victims get justice after 31 years. *Hindustan Times* <https://www.hindustantimes.com/india-news/families-of-hashimpura-mass-murder-victims-get-justice-after-31-years/story-8gntfaqDQ4fUkPtkZ1sBbK.html>
- Inabanathan, Anand & Sivanna, N (2010). *Scheduled Castes, legitimacy and local governance: Continuing social exclusion in panchayats*. Working Paper 257, The Institute for Social and Economic Change.
- Jain, Tarika & Tripathy, Shreya. (2020, Feb. 3). 70 Years Of Indian Judiciary | Opinion: Composition terribly skewed, higher levels bastion of upper caste males. *OUTLOOK INDIA MAGAZINE*, noted in Dalit Justice Defenders in India,pg 11<https://www.outlookindia.com/magazine/story/india-news-70-years-of-indian-judiciary-opinion-composition-terribly-skewed-higher-levels-bastion-of-upper-caste-males/302658>

- Jayati, Dhruvo. (2021). Crimes against Dalits, tribals increased in Covid pandemic year: NCRB, *Hindustan Times*. Retrieved on 19 April 2022 <https://www.hindustantimes.com/india-news/crimes-against-dalits-tribals-increased-in-covid-pandemic-year-ncrb-101631731260293.html>
- Jyoti, Dhruvo. (2021, September 14). Hathras rape: A year on, still living in fear, buried under social stigma. *Hindustan Times*. <https://www.hindustantimes.com/india-news/hathras-rape-a-year-on-still-living-in-fear-buried-under-social-stigma-101631551530968.html>,
- Live Law. (2021, October 26). Kapil Sibal argues for Zakia Jafri in Gujarat riots case, *Live Law*, <https://www.livelaw.in/top-stories/gujarat-riots-case-zakia-jafri-supreme-court-kapil-sibal-narendra-modi-gulbarg-society-godhra-184388>
- Mahapatra, Dhananjay. (2018, May 8). Supreme Court shifts Kathua rape trial to Pathankot, orders day-to-day hearing, *The Times of India* <https://timesofindia.indiatimes.com/india/sc-shifts-kathua-rape-trial-to-pathankot-orders-day-to-day-hearing/articleshow/64071342.cms>
- Massachusetts Access to Justice Commission (2007). *Barriers to access to justice in Massachusetts: A report, with recommendations to the Supreme Judicial Court*.
- Muralidhar, S. (2004). *Law, poverty and legal aid: Access to criminal justice*. Lexis Nexis Butterworths.
- NDMJ. (2020). Areas of work. *National Campaign for Dalit Human Rights*. Retrieved on 21 April 2022.
- Ogletree Jr, Charles J. (2005). All deliberate speed: Reflections on the first half century of *Brown V. Board of Education*. *66 Mont. L. Rev.*
- Paliath, Shreehari. (2020). Seven in 10 Indian prisoners are awaiting trial – one in three jail inmates is Dalit or Adivasi. *The Scroll*. Retrieved on 21 April 2022 <https://scroll.in/article/972458/seven-in-10-indian-prisoners-are-awaiting-trial-one-in-three-jail-inmates-is-dalit-or-ativasi>
- Press Trust of India (2004, August 06) SC transfers Bilkis case to Maharashtra, *Press Trust of India* <https://www.rediff.com/news/2004/aug/06guj.htm>
- Press Trust of India. (2008, December 6). Lawyers refuse to take up arrested terrorist's case. *Press Trust of India*, <https://www.rediff.com/news/2008/dec/06mumterror-lawyers-refuse-to-defend-kasab.htm> Retrieved on 19 April 2022.
- (2013, January 08). Gangrape case: Katju slams Saket Bar Association member. *Business Standard* https://www.business-standard.com/article/pti-stories/gangrape-case-katju-slams-saket-bar-association-members-113010800393_1.html Retrieved on 20 April 2022.
- Ray, Meenakshi. (2021, December 24). Building confidence about legal aid is key to ensuring justice: Justice UU Lalit at HTLS 2021. *Hindustan Times*, Retrieved on 21 April 2022 <https://www.hindustantimes.com/htls/ht-leadership-summit-2021/building-confidence-about-legal-aid-is-key-to-ensuring-justice-justice-uu-lalit-101638597787630.html>
- Rhode, Deborah L. (2004). *Access to justice*. New York: Oxford University Press.
- . (2009). Whatever happened to access to justice. *42 Loy. L.A. L. Rev.* 869.
- Scroll. (2017, April 4). In many Indian states and union territories, you can be arrested just for 'looking' poor. *Scroll.in*. <https://scroll.in/article/833471/in-many-indian-states-and-union-territories-you-can-be-arrested-just-for-looking-poor>
- Sharma, Ashutosh. (2019, October 2). Mahatma Gandhi on law and lawyers, *The Leaflet* <https://theleaflet.in/mahatma-gandhi-on-law-and-lawyers-perspective/>
- Sharma, Betwa (2009, April 26) 'How BilkisBano's Lawyer Wrested The Highest Compensation For Rape In India', *HuffPost*, https://www.huffpost.com/archive/in/entry/bilkis-banos-compensation-gujarat-police-modi_in_5cc2816be4b08846403c06d0;

- Silberman, Charles E. (1978) *Criminal violence, criminal justice*. New York: Random House.
- Singh, Kautilya. (2015, December 13). Ex-narinetan head held in rape-abortion case. *The Times of India*. Retrieved on 21 April 2022 <https://timesofindia.indiatimes.com/city/dehradun/ex-nari-niketan-head-held-in-rape-abortion-case/articleshow/50163388.cms>
- Singh, Soibam Rocky. (2018, August 25). 32 persons convicted in Mirchpur caste violence case. *The Hindu*. <https://www.thehindu.com/news/cities/Delhi/32-persons-convicted-in-mirchpur-caste-violence-case/article24775520.ece>
- . (2018, March 31). Undertrials languishing in jail despite being granted bail. *The Hindu*. Retrieved on 19 April 2022. <https://www.thehindu.com/news/cities/Delhi/undertrials-languishing-in-jail-despite-being-granted-bail/article23403807.ece>
- Stevenson, Bryan. (2014). *Just Mercy*. New York: Spiegel & Grau.
- Wexler, Stephen. (1970). Practicing law for poor people. *Yale Law Journal*, Vol. 79, No. 5.
- White, Barbara Harriss. (June 2002). Working Paper Number 86, A Note on Destitution. <http://workingpapers.qeh.ox.ac.uk/RePEc/qeh/qehwps/qehwps86.pdf> Retrieved on 19 April 2022.