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Legal Illiteracy

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ABSTRACT

The Indian Constitution has been the backbone of the Indian Legal System ever since its inception. Many would say that it had been a 'Lawyer's Constitution' considering the legal qualifications of the members of the Constituent Assembly and their inputs that went into the drafting of the Indian Constitution. The Constitution thus drafted has been a legal miracle, drawing from the very best Constitutional and legal practices of the world. Yet, this glory itself has in fact surfaced a critical curtailment in working this fine Constitution and a legal system. Illiteracy has been profound in a country like India, let alone legal illiteracy. The carefully crafted legal framework of this country has thus been reduced to a fierce weapon whose benefits can be enjoyed if only one knows how to use it. The legal knowledge, pre-requisite to make use of the Indian legal system has barely penetrated into the masses who continue to dwell under a veil of injustice and legal disavowal. In this paper we aim to delve into the intricacies of legal illiteracy to enquire into the question "whether the convoluted legal procedures latent within the Indian Judicial system has rendered justice to become a bane than a boon for the masses?" We proceed with a hypothesis which propounds that the "legal jargon and elaborate procedures in the Indian legal system has been turning the populace apathetic towards the Indian Judicial system" using the variables of legal structure and procedure and mass indifference towards legal procedure.

Keywords: legal knowledge, pre-requisite, apathetic, legal procedure.

I. INTRODUCTION

Law has been intrinsic to the evolution of human civilization. It is but a logic of leading life that ensures harmony within the society. Harmony as even propounded by the ancient Greek philosopher Plato has been the essence of justice and thereby a just society². It is this harmony that every civilization throughout evolutionary history has sought after. Even in the Indian context Mahatma Gandhi had emphasised upon the means of dialogue³ to maintain a harmony within the society in the pursuance of his core principles of "truth" and "non-violence." Law hence is what emanates from society and is established by the society for the harmonic governance of the society. It thereby took the form of a set of rules recognised by the society

¹ Author is a student at Symbiosis Law School, Pune, India.

² Plato. (n.d.). *The Republic*. New Delhi: Fingerprint Classics.

³ Terchek, R. J. (2011). Conflict and nonviolence. In J. M. Parel, *the cambridge companion to Gandhi* (pp. 122-123). New York: Cambridge University Press.

that can be backed up by sanctions⁴. Its sources have been many but primarily clubbed under three major categories, those given by the Naturalist approach, the Positivist approach and lastly the Realist approach. The history of the Indian legal system can be traced back to the naturalist approach wherein laws emerged through customs in ancient India. Ancient Indian literature confides the socio-political and legal customs in the ancient Indian civilization. Books such as the Vedas, Shastras and Upanishads contain several customs that can be traced as the origins of modern laws put into use in contemporary times. The 'Manusmriti' in particular contained an extensive explanation of legal procedures and the aspect of 'Dandaniti' or the procedure of punishments. Nonetheless, law in use today is what has percolated in the country through almost two centuries of British accession. The English law is starkly apparent within the Indian legal system albeit, legal practices of several major and fine Constitutions also mark their presence within the Indian Constitution that forms the backbone of Indian Judicial system.

II. LEGAL SYSTEM IN INDIA

The drafting of the Indian Constitution begun right after independence under the Chairmanship of Dr. B. R. Ambedkar through a Constituent Assembly observed keenly by the honourable Prime Minister Pandit. Jawaharlal Nehru. The membership of the Constituent Assembly reflected a preponderance of personalities resonating a legal background. In fact, more than a dozen members of the drafting Committee "were not Congressmen, and the Working Committee saw to it that they were elected so that their talents in administration, law, and constitutional law and their experience in national affairs would be available to the Assembly⁵." A. K. Ayyar, H. N. Kunzu, N. G. Ayyangar, Dr. Ambedkar, K. Santhanam, M. R. Jayakar, Sachchidanada Sinha, and K. M. Munshi were among the pioneering figures educated in law and well versed with the dictates of the English legal system alongside the legal principles prevalent in the renowned democracies of the world. Thus, in an attempt to craft the out the most invaluable and finest Constitution, also the world's lengthiest and heftiest Constitution an extensive amount of legal jargon made their way into this ultimate doctrine of Judiciary in India. The leadership that led India into independence was highly influenced by the west and the western ideas of liberty, democracy, and rule of law which thereafter with Indian independence inherently reflected in the Constitution created to govern this vast nation of divergences. Nonetheless, the disparity between the leadership and the grassroots level although could have

⁴ John Austin's definition of law, "Command of the Sovereign backed up by sanctions." Austin, J. (1999). *The Province of Jurisprudence Determined*. New Jersey : The Law Book Exchange Ltd.

⁵ Austin, G. (1966). The Constituent Assembly - Microcosm in Action: The Origins and Creation of the Assembly; In dia in Microcosm. In G. Austin, *The Indian Constitution: Cornerstone of a antion* (p. 13). London : Oxford University Press.

been eulogized, but could not have been alleviated. Hence, the ideal constitution constructed for ideal governance for a longer period of time remained out of reach for the illiterate, uneducated and prejudiced vast majority of the Indian populace.

III. OBSTACLES IN LEGAL LITERACY

Illiteracy by virtue of its definition refers to ‘the lack of acquisition and retention of skills of reading and writing’⁶ which is a characteristic that infests the wider part of our country. This illiteracy is further manifested when it comes to the legal front. In determining the causation behind such legal illiteracy Baxi harps strictly into the large number of variables stretching across historical time and space that indicate the existence of legal literacy increasingly in ‘written’ form and hence inaccessible to the illiterate. It has been an age-old tradition followed over ages that “those who govern take the utmost scrupulous care to craft legal rules in ways which render it incomprehensible to those most governed by it.’ This factor of incomprehensibility has rendered the justice in India inaccessible to the larger populace legally uneducated and illiterate. Thereby endorsing the fact that ‘the success of the Indian democratic experiment owes a very great deal to the literacy of the literate rather than the illiteracy of the illiterate.’⁷ It can be said that the legal mechanism in India is confined and retained within the tight grasp of a political elite and the legal community when in the truest spirit the legal system it is supposed to be the mechanism that works to seek justice for the people irrespective of class divisions or illiteracy, thereby attributing the furnishing of the corpus of the immense constitution of illiteracy’ to the ‘great Indian Constitution.’ Furthermore, legal illiteracy here is not just attributed to the ‘illiterate’ (in the definitive meaning of the term) but also extends to the wider middleclass that remains unaware of legal jargons codified within the hefty books of law. Moreover, the exorbitant amount of time and expenses drained in the process of legal redressal and the little remuneration received in return portray a dismal account of affairs concerning the legal system in this country. These critical hindrances can largely be associated with the reservations and prejudices rampant amidst Indian masses when it comes to matters dealing with the court or law.

IV. DEVELOPMENTS TO ERADICATE LEGAL ILLITERACY

“We do not think it is possible to reach the benefits of the legal process to the poor, to protect them against injustice and to secure to them their constitutional and statutory rights unless

⁶ Baxi, U. (2008). Why Legal Literacy? A Wake-up Call. In K. S. Singh, *Towards Legal Literacy: An Introduction to Law in India* (pp. 1-9). New Delhi: Oxford University Press.

⁷ *Ibid.*

there is a nation wide legal service programme to provide free legal services to provide free legal services to them."⁸

As a part of our Directive Principles enshrined in part IV of our Constitution, we have Article 39 (A) that provides for "Equal Justice and Free Legal Aid ⁹." However, in practice resources and assistance made available to civil litigants within the Indian legal system is paltry. "A legal system that is both accessible and effective in protecting legal rights, especially for the poor and disenfranchised, is still more of an aspiration than an accurate description of India's civil justice system"¹⁰. The major causes for such a situation as also observed by Upendra Baxi and endorsed by Higgins can be attributed to 'high rates of illiteracy amongst litigants, caste and sex discrimination against both lawyers and litigants, and widespread corruption.' A major break in this direction came with the Supreme Court Judgement in *Hussainara Khatoon v. State of Bihar*¹¹ wherein it was observed that the guarantee under Art. 21 to a 'reasonable, fair and just' procedure when a person's liberty or life is at stake includes a right to legal assistance¹². Soon after in the eighties a turn in the 'myth and the reality of judicial independence'¹³ did come with the SAL¹⁴ or the PIL (Public Interest Litigation) regime which induced certain differences by mending the *locus standi* whose domino effect has translated to great lengths in the country's legal system. In *Gupta v. Union of India*¹⁵, the Supreme Court held that any member of the public can maintain an application for an appropriate direction, order or writ on behalf of a person or class of persons whose constitutional or legal rights have been violated and who by reasons of poverty, helplessness, or disability or socially or economically disadvantaged position, are unable to approach the Court for relief ¹⁶. Further, in 2007, a national legal aid

⁸ *Hussainara Khatoon v. State of Bihar, 1979 SCR (3) 532.*

⁹ Equal justice and free legal aid. 39A; The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities; (Part IV. —Directive Principles of State Policy.)

¹⁰ Higgins, A. (2014). Legal Aid and Access to Justice in England and India. *National Law School of India Review; Vol. 26, No. 1*, 13-30.

¹¹ Demonstrated the injustices that can be caused by delays attributed to lack of legal representation by highlighting the case of prisoners who had been in detention without trial for a longer period than they would have been had they been convicted and sentenced; but owing to inability to obtain legal assistance their cases had been delayed. See *Hussainara Khatoon v. State of Bihar, 1979 SCR (3) 532.*

¹² *Ibid*;8

¹³ Baxi, U. (1985). The Myth and Reality of Judicial Independence: The Judges Case and All That. In U. Baxi, *Courage Craft and Contention: The Indian Supreme Court in in the Eighties* (pp. 32-33). Bombay: N. M. Tripathi Private Limited.

¹⁴ Social Action Litigation as coined by Upendra Baxi.

¹⁵ *Gupta v. Union of India, (1981) Supp SCC 87.*

¹⁶ "Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right ... and such person or determinate class of persons is by reasons of poverty, helplessness, or disability or socially or economically disadvantaged position, unable to . approach the Court for any relief, any member of the public can maintain an application for an appropriate direction, order or writ"; See *Gupta v. Union of India, (1981) Supp SCC 87.*

system was authorized regulated by the Legal Aid Authorities Act, that came up with a wider and more inclusive provision with regard to ‘disadvantaged’ or ‘disenfranchised’ people in need for legal aid¹⁷. The Supreme Court itself took upon the onus to address this issue by setting up the ‘Supreme Court Legal Services Committee’ (SCLSC) in order to provide free legal aid to the poor and disenfranchised by appointing legal consultants who provide legal advice to poor litigants either on personal visit or through the post. Additionally, legal aid for formal court proceedings is also supplemented by an elaborate ‘Lok Adalat’ system that provides cheap alternate dispute resolution mechanism. These developments can be perceived as the stepping stones towards eradicating the problems resulting from legal illiteracy, nonetheless, its outreach still has a long way to go.

V. CONCLUSION

It can hereby be concluded that the legal system that has evolved in our country has been a carefully crafted product of scrupulous and meticulous understanding, analysis, debates and discussion of the strengths and weaknesses of legal systems the world over. Such a well drafted work of legal literature perhaps could be considered a legal marvel, yet its truest interpretation and application thereby remains confined to only those who may know how to read it. It is the unawareness and lack of knowledge that becomes the breeding grounds for fear, anxiousness and prejudice, and more importantly apathy. Apathy of the people towards the legal system can paralyze the Judiciary permanently and can thereby prove to be a massive blow to democracy altogether. This must be prevented in order to preserve the working of our “Democratic Constitution.”¹⁸ The way forward in this scenario is provided through the means of educating the masses and also acquainting them with legal knowledge. Both literacy and legal literacy is required to survive the very institution of the judiciary and thereby the legal system in the

¹⁷ Act 2007. A person is eligible for assistance under the Act if he is –

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;
- (d) a mentally ill or otherwise disabled person;
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home or in a juvenile home
- (h) of in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or
- (i) A person whose annual income less than nine thousand rupees or such other higher amount as may be prescribed by the State Government, and less than twelve thousand rupees or such other higher amount as may be prescribed by the Central Government if the case is before the Supreme Court. Also see Legal Services Authorities Act, 1987; Chapter IV; Section 19.

¹⁸ Austin, G. (1999). *Working a Democratic Constitution: The Indian Experience*. New York: Oxford University Press.

country. The initiative taken up in this direction must be lauded and more such initiatives with fervent vigour must surface. In concluding we may draw the words of the founding father of the Indian Constitution, Dr. B. R. Ambedkar in urging to “be educated, be organized and be agitated” to stress upon the cogent need of the hour to educate and educate in legal knowledge for the survival of justice and harmony and the survival of our very civilization and democracy that has been painstakingly earned, created and gifted to us by our forefathers.

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