

SOCIAL JUSTICE LAWYERING: WHY IS THERE A NEED FOR SOCIAL JUSTICE LAWYERS

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“Learn to do good; seek justice, correct oppression; bring justice to the fatherless, plead the widow's cause.”

- Isaiah 1:17

INTRODUCTION

Social justice is justice that follows the principle that all individuals and groups are entitled to a fair and impartial treatment. Social justice attempts to prevent human rights abuses. Social justice is based on notions of equality and equal opportunity in society. The challenge of social justice is to evoke a sense of community that we need to make our nation a better place, just as we make it a safer place. It focuses on the full and equal participation of all citizens in economic, social and political aspects of the nation.

It derives its authority from the codes of morality in each culture and differs from culture to culture. United Nation's objectives of social justice policies include social, economic and cultural rights, including right to an adequate standard of living; right to work and equal pay for equal work; right to education; and right of minorities to enjoy their own religion, language and culture.¹ When we identify where our privilege intersects with somebody else's oppression, we'll find our opportunities to make real change.

While geopolitics played a key role in determining the extent to which human rights were pursued as part of a governmental foreign policy agenda, international nongovernmental

¹ Social Justice Law and Legal Definition, <https://definitions.uslegal.com/s/social-justice/>.

organizations whose core missions were to uphold and promote the human rights principles set forth in the UN Declaration on Human Rights and the core international human rights treaties, sought to advance human rights globally, sometimes despite the particular foreign policy objectives of the state and these have been realized by our lawyers who seek to ensure rights to the citizens.²

“Genuine equality means not treating everyone the same, but attending equally to everyone’s different needs.”

- **Terry Eagleton**

The profession of law is a noble one, as it has deep and a direct impact on the lives of people. However, with changing times and new approaches to the profession, the value of social justice is gradually disappearing. However, some people opt of social justice Lawyering for their passion to contribute towards society but some people think that it has lots of money and fame. For this are the present generation lawyers to be blamed? Or is the modern legal education to be blamed? Is social responsibility a symbolic enterprise? Is it a value that is inherent or a normative concept that should be aspired towards? This, article is an attempt to critically analyse and comment on the concept of **Social Justice Lawyering**, its present status and s try to answer the above posed questions by backing it up with relevant data.

IMPACT OF SOCIAL JUSTICE LAWYERING

Meaningful social change occurs when marginalized and dispersed people unite and organize to take power into their own hands. Such groups benefit greatly by forming relationships with lawyers and including them in their organizing processes. Social Justice and Public Interest Law consists of working for marginalized, subordinated, and underrepresented clients and causes.³ Lawyers have their duties as citizens, but they also have special duties as lawyers. Their obligations go far deeper than earning a living as specialists in corporation or tax law.

² Human Rights and Non-Governmental Organizations on the Eve of the Next Century, 66 FORDHAM L. REV. 627 (1997-98).

³ Social Justice and Public Interest Law, <https://law.scu.edu/careers/career-pathways/social-justice-public-interest-law/>.

They have a continuing responsibility to uphold the fundamental principles of justice from which the law cannot depart as quoted by Robert F. Kennedy who was the U.S. Senator from New York from January 1965 until his assassination in June 1968.⁴

Areas of social justice in which a punishment becomes mandatory directly affect the law. These include civil rights violations, domestic violation and abuse, forced marriages. Statutory rights and other social issues that call for an immediate action on part of the authorities, people who are directly or indirectly affected due to these offences or crimes should be provided with a platform to use law as their weapon and attain legal representation to fight their case. Law professors have described social justice in the legal system 22 in more practical ways. It has been described as “working to provide access to justice and understanding and addressing inequities in our justice system.”⁵ Or as a means of “promoting the interests of people otherwise marginalized by society.”⁶

Social Justice has penetrated the law because the above-mentioned crimes are not acceptable in any society and to address these should be the topmost priority for the government. Laws regarding discrimination based on gender, race, religion and sexual orientation are directly related to social justice implementation. These social issues exist everywhere in the world and not just in India. Wherever they are prevailing, they cause a huge hindrance to growth, affect economy, and destroy the essence of culture. For various social justice fields like female jurisprudence, education, environment, health and civil rights, certain laws can be made and practiced in a country.⁷

Lawyers play a critical role in the prioritization of civil, political and social justice rights over economic, social, and cultural rights, noting the normative-judicial model of human rights implementation is “dominated by lawyers whose tools are traditional legal reasoning, the use of legal institutions and techniques, and the pursuit of familiar types of remedies such as administrative regulations, legislative programs, and court judgments.”

⁴ Address by Attorney General Robert F. Kennedy At Dedication of Kendrick Hall in 1962.

⁵ Antoinette Sedillo Lopez, Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training, 7 *CLINICAL L. REV.* 307, 309, 316 (2001).

⁶ Claire Donohue, Client, Self, Systems: A Framework for Integrated Skills-Justice Education, 29 *GEO. J. LEGAL ETHICS* 439, 447 (2016).

⁷ Social Justice and Law, <http://www.osjspm.org/social-justice-and-law>.

The scope of the social justice and human rights agenda as well as the methodology employed for pursuing that agenda has begun to evolve in the twenty-first century, as advocates have begun to internalize and respond to the critical theorists and others who resisted the didactic nature and are today understanding that their advocacy today can help disempowered victims helpless in their own pursuit of dignity.⁸ Social justice lawyers have to provide redress to those who have endured rights violations.

CRITICAL OVERVIEW

Improvement of social capital requires the inclusion of more people in the field of social science. Lawyers are social scientists who can help in the development of society. They have historically played leading roles in bringing much-needed change to society. Social Justice is the foundation stone of Indian Constitution. Indian Constitution makers were well known to the use and minimality of various principles of justice. They wanted to search such form of justice which could fulfil the expectations of whole revolution. Pt. Jawahar Lal Nehru put an idea before the Constituent Assembly -

“First work of this assembly is to make India independent by a new constitution through which starving people will get complete meal and cloths, and each Indian will get best option that he can progress himself.”⁹

Most of the Nationalist leaders of the freedom struggle were lawyers. Advocate and environmentalist M.C. Mehta is an epitome of how valuable lawyers are to the nation. Often known as ‘One Man Enviro-legal Brigade’, he has won several landmark cases, one of them being the banning of polluting industries in the vicinity of the Taj Mahal in the year 1996. His unending efforts helped include the ‘Right to a healthy environment’ in the Constitution’s Right to Life (Article 21).¹⁰ is a laggard in terms of social development.

⁸ Human Rights Home, A History of Human Rights In The United States 25 (Cynthia Soohoo Et Al. Eds., 2008).

⁹ Constitution Of India And Social Justice – Shashikant.

¹⁰ Why India Needs More Lawyers to Continue Its Economic Growth While Also Progressing Socially, <https://www.thebetterindia.com/100575/india-need-lawyers-not-engineers/>.

India ranks 143rd out of 180 countries by the *Global Burden of Disease report* (2015), 97 out of 118 countries in the *Global Hunger Index* (2016), and 98 out of 148 countries in the Global Social Index (2016). In the *Human Development Index* (2015), India ranked 130 and falls below South Asian countries like Iran, Maldives, and Sri Lanka. More than 16 percent of our population comprises of the scheduled castes.

More than 16 percent of our population comprises of the scheduled castes. Owing to a long history of social exclusion, a section of our society was not exposed to opportunities of personal growth and development. This section was called 'Depressed classes' by Babasaheb Ambedkar. Coming from the same social background Babasaheb was cognizant of the needs and challenges of the community. In course of his public life, Babasaheb scaled great heights of achievement. After being educated at institutions of eminence worldwide, he came back to homeland to work in the furtherance of interest of the community.¹¹

By taking Mahatma Gandhi's example, we can learn determine when and where law is redundant and go ahead to freely break the law in such cases. No country could be run on hate and fear, without the goodwill and collective participation of the. In a world where no one is willing to take up the cases of the poor, if the students as future lawyers keep their doors open and take up the cases of the marginalized, this would in turn yield the unmatched reward of great peace of mind and satisfaction.¹²

If one closely analyses the legal profession in current context, it can be seen that all the law professionals can be divided into two sets: **(A)** Voluntarily contributing towards the society and **(B)** Acting to contribute by the force or peer pressure. The first set of people or lawyers are very difficult to find as giving back to the society by the way of free legal aid or others has become a rarity. The need of helping the society and sticking to the age-old theory of social lawyering can be found in the words of **Michael Kirby** a former Judge of the High Court of Australia: -

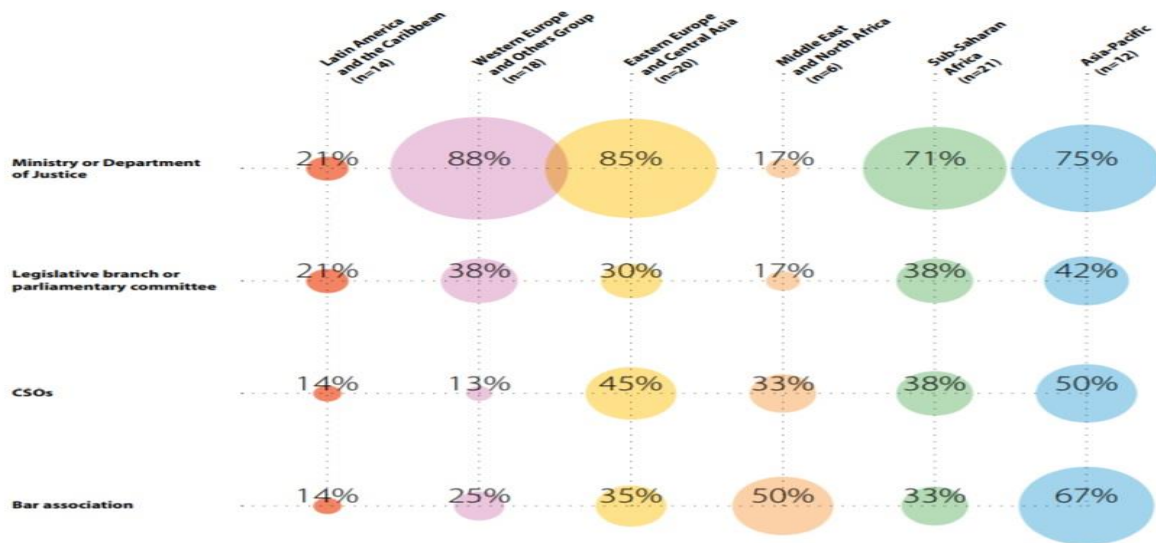
"The righting of wrongs. The redress of discrimination. The protection of the underdog. Upholding the law against the strong and the powerful. Is this not why we were all, one day

¹¹Guru Prakash, India at 70: Sustaining Social Justice, <http://pib.nic.in/newsite/printrelease.aspx?relid=169687>.

¹² Pick Up Social Justice Litigation as A Career After Law School: Sr. Advocate Colin Gonsalves.

long ago, attracted to the law? We must make sure that we do not lose our direction and forget that original impulse.”

The moral doctrines that regulate the legal profession discuss and promote the lofty ideals of informed democracy and the autonomy of every human being. The professional responsibility codes exhort lawyers to protect the system that safeguards individual rights in order to preserve societal values.

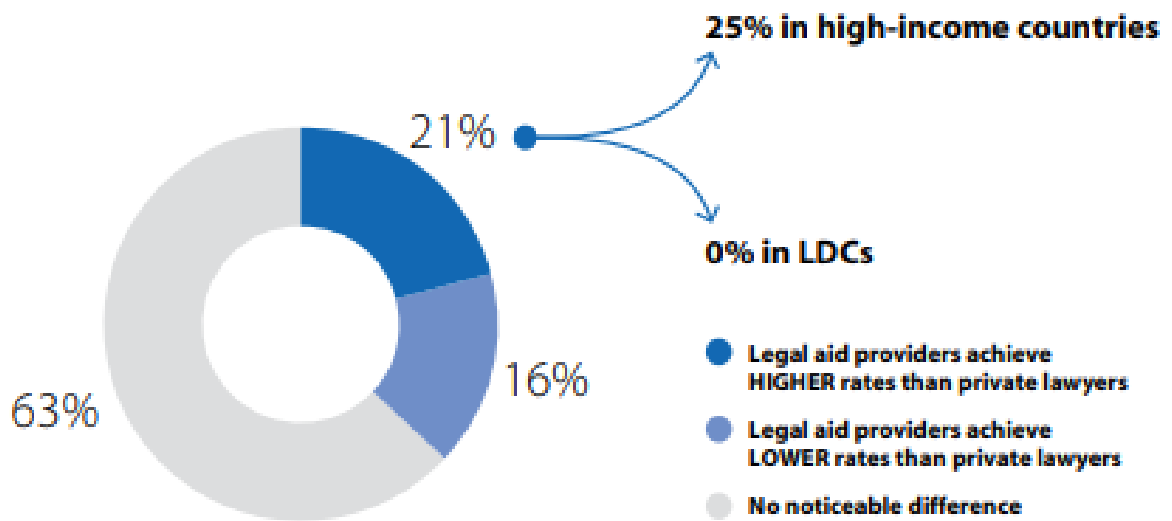


Source: GSLA Expert Survey; UNDP.

Lawyers have an obligation to work for the betterment of the legal system and have a unique role as "guardians of the law." These ideas would seem to appeal to the moral center of every lawyer's soul, yet the codes promote a role of the lawyer that only addresses one conception of lawyering - that of lawyers as a governing class. This image views lawyers as a noble assembly that works for the people out of a sense of duty stemming from their superior skills and judgment.¹³

What percentage of lawyers do actually take part in the process of social justice lawyering?

¹³ Karen L. Loewy, *Lawyering for Social Change*, 27 *Fordham Urb. L.J.* 1869 (2000).



The above given data portrays the percentage of lawyers taking part in process of social justice in high- income & low- income countries across globe¹⁴.

When talking about social justice lawyering in India the following lawyers can never be forgotten:

- **MC Mehta:** Adv. Mehta has single-handedly changed the face of environmental laws in India.
- **Menaka Guruswamy_:** Working mostly in constitutional law, Menaka Guruswamy has been instrumental in defending a provision in the RTE mandating that all private schools admit disadvantaged children, and was among the lawyers arguing for the Naz foundation while challenging Section 377 of the IPC.
- **Vrinda Grover:** She is a lawyer and human rights activist and has made significant contributions to the women's rights. Grover has represented victims in the Soni Sori rape case¹⁵ and has been influential in the drafting of the Criminal Law Amendment of 2013, the POCSO Act 2012 and the Prevention of Torture Bill, 2010.

SOCIAL JUSTICE LAWYERING AROUND THE WORLD

¹⁴ "UN Documentation", <https://research.un.org/en/docs/find>, Accessed on 8th October, 2018.

¹⁵ *Soni Sori v. State of Chhattisgarh*, W.P. (C.R.L.) 206/2011.

AUSTRALIA AND SOCIAL JUSTICE LAWYERING: The pro bono work undertaken by Australian lawyers is a matter of enormous pride for us. Australian lawyers provide hundreds of thousands of pro bono work hours every year to those who have no one else to turn to and cannot afford to pay for legal services. The Australian Pro Bono Centre's latest report finds 402 thousand hours of pro bono services were provided in 2015-16. That is 35 hours of pro bono legal services, per lawyer, per year –roughly one week of unpaid work a year for every Australian lawyer. CLCs are a critical safety net in our justice system, yet they are woefully underfunded. CLCs managed to assist over 216,000 clients last year with advice and casework services.¹⁶

THE MIDDLE EAST AND NORTH AFRICA: In most States in the Middle East and North African region, legal aid is provided primarily for criminal matters and with heavy reliance on a mix of assigned counsel and pro bono services through the bar association. In Jordan, for example, while the State-sponsored legal aid is available only for serious crimes (those carrying the sentence of death or life imprisonment) most legal services are provided on a pro bono basis through the bar association and/or CSOs.¹⁷

INDONESIA: In Indonesia, law students began providing primary legal aid through advice and consultation bureaus in 1967 and by 1971, the Indonesia Advocates' Union (Persatuan Advokat Indonesia, Peradin) called for the establishment of a Legal Aid Institute, the first of which (Lembaga Bantuan Hukum) was set up with the backing and financial support of the Governor of Jakarta.¹⁸

EASTERN EUROPE AND CENTRAL ASIA: In the last century, legal services for the poor were delivered through an ex officio appointment approach where legal practitioners provided services either pro bono or were compensated for discrete actions in certain types of cases. Each country's local bar association, or "College of Trial Lawyers", drafted licensed lawyers

¹⁶ Role of the Legal Profession for Social Justice, Legal Aid and Pro Bono Work: Fiona McLeod SC, President of the Law Council of Australia, at the 2017 Presidents of Law Associations of Asia Conference (POLA), Colombo, Sri Lanka.

¹⁷ Justice Center for Legal Aid, "Legal Aid in Jordan".

¹⁸ Audrey Kahin, *Historical Dictionary of Indonesia*, 3rd ed. (Rowman & Littlefield Publishers, 2015)

to share the benefits of their education and training with the population, by offering defense services on an ad hoc basis, largely in criminal cases.¹⁹

CONCLUSION

Any definition of a culture of peace must address the problem of achieving justice for communities and individuals who do not have the means to compete or cope without structured assistance and compassionate help. The measure of the greatness of a society is found in the way it treats those most in need, those who have nothing apart from their poverty. The challenge of social justice is to evoke a sense of community that we need to make our nation a better place, just as we make it a safer place.

Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe, this is where social justice lawyers come into play and stand for the rights and privileges of these oppressed citizens and work for the betterment of the society. Justice is a conscience, a conscience of lawyers and all of humanity and all the lawyers who recognize the voice of their conscience also recognize the voice of justice.

Critical to social justice lawyering practice in both domestic and global settings is an understanding that there is no single, monolithic “community” with which lawyers interact. “Community” is often built by complex coalitions and alliances that can include numerous actors and leaders, intentional partnerships, and various relationships (or history of relationships) with government actors. Lawyering based on respect for those within a community holds the people—those people who are impacted the most by policies and decision-making—as indispensable to and for a successful lawyering process. In this respect, the term “collaborative lawyering” rather than “community lawyering” might better describe the central values, relationship and alliance, between lawyer and client in a participatory lawyering model aimed at tactical coordination, community mobilization and large-scale transformation to ensure social justice. Lawyers must also develop and monitor their own ideas,

¹⁹ Ed Cape and Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, (Moldova: Soros Foundation, Legal Aid Reformers’ Network, 2012).

discourse, and actions in light of social and cultural values; local economic and political forces; needs of vulnerable populations that are involved in the decision making of the country.²⁰



²⁰ Lucie White, To Learn and Teach: Lessons from Driefontein on Lawyering and Power, 1988 WIS. L. REV. 699, 742 (1988).