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## India

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lower than the fees normally charged for consultation or litigation, many solicitors have found themselves unable to afford to act in Legal Aid cases. As a result it may be difficult, and in some areas of the country impossible, for an individual to find someone to represent him in a Legal Aid matter.<sup>23</sup>

Further, the lack of neighborhood offices has reduced the amount of publicity given the scheme, and has prevented the development of a procedure for informing the public of the needs which the scheme might fulfill. Partly as a result of this and partly because of the eligibility regulations, the only area in which Legal Aid has had a substantial impact has been that of divorce and related matters which constitute 83% of the current Legal Aid caseload.<sup>24</sup> In this area, however, the effect has been tremendous: By 1965 over 70% of petitioners for divorce or related relief received Legal Aid.<sup>25</sup>

Finally, some notice should be taken of the Legal Advice provisions of the Legal Aid Scheme.<sup>26</sup> These provisions apply whenever consultation with a solicitor is sought on matters which are not expected to lead to litigation. The client seeking legal advice must have a disposable income of not more than £7.50 (\$18.00) a week and disposable capital of not more than £125 (\$300) and may receive up to 1-1/2 hours of consultation for which the solicitor will be compensated at a rate of £1.00 (\$2.40) per half-hour.<sup>27</sup>

In conclusion, Britain has yet to develop an adequate system of providing access to the courts for those who cannot afford to pay the costs of their own litigation. A number of informal systems have developed which help to alleviate this problem, but it is still true, as stated in the principal lawyers' manual on the Legal Aid System, that "(i)t is not unduly cynical to say . . . that there is now one law for the rich and poor—and none for the middle classes"<sup>28</sup>

## India

by Jerry L. Kagele\* and John F. Murphy\*\*

The subject of legal services to persons of moderate means in India may be summarized in one sentence: No such services are at present available. Rather, the problem in India is to provide an adequate system of legal

<sup>23</sup>LASS, *op. cit. supra* note 5, at 19-20.

<sup>24</sup>*Id.* at 21.

<sup>25</sup>The Law Commission, *Reform of the Grounds of Divorce*, Command Paper 3123, HMSO (1966) p. 58.

<sup>26</sup>The Legal Advice Regulations 1959, S.I. 1959 No. 47, *as amended* S.I. 1960, No. 729.  
<sup>27</sup>*Id.*

<sup>28</sup>E. Moeran, *op. cit., supra* note 22, at 12.

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services for the great bulk of the population that lives in abject poverty. Nonetheless, it may be useful briefly to consider India's special problems in providing legal assistance and her efforts toward the development of a system of equal justice for all under law.

India is a federal republic with a federal government referred to as the Centre and with seventeen states and ten centrally administered areas,<sup>29</sup> each with a governor appointed by the President and with its own elected legislature. Unlike the United States, India has a single judicial system, not a dual system of courts. At the head of the judicial hierarchy is the Supreme Court of India. There is no equivalent of our federal district courts and circuit courts of appeal. Instead, directly under the Supreme Court of India are the High Courts of the several states and the district courts and other subordinate local courts. The Supreme Court and the High Courts have their own rules and regulations concerning legal aid. Accordingly, in any discussion of legal aid in India, one must specify whether one is referring to legal aid at the Centre or at the level of the several states and centrally administered areas.

No effort will be made to discuss legal aid in every state or area. Rather, this survey will attempt to provide an overview of legal services at both the Centre and the local levels, with some specific references to the situation in those states that have the most developed legal services.

First, however, it is instructive to consider several provisions of the Constitution of India which set the framework for legal services and arguably<sup>30</sup> require that such services be provided.

## CONSTITUTIONAL CONSIDERATIONS

Article 38 of the Constitution of India provides that "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life." article 22(1) provides in pertinent part that "No person who is arrested shall be . . . denied the right to consult and to be defended by, a legal practitioner of his choice"; and article 14 commands that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The similarities between these articles and

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<sup>29</sup>The states of India are: Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Kerala, Jammu and Kashmir, Madhya Pradesh, Madras, Maharashtra, Mysore, Nagaland, Punjab, Orissa, Rajasthan, Uttar Pradesh, and West Bengal. Centrally administered areas or Union territories include: Delhi, the Andaman and Nicobar Islands, the Laccadive Islands, Himachal Pradesh, Manipur, Tripura, the Northeast Frontier Agency, Pondicherry, and the former Portuguese territories (Goa, Daman, Diu, Dadra, and Nagar Haveli).

<sup>30</sup>See Koppell, *Legal Aid in India*, 8 J. INDIAN L. INST. 224 (1966).

the Sixth Amendment and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution—the bases of the leading decisions on legal aid in the United States<sup>31</sup>—are obvious.

The Supreme Court of India has consistently held, however, that these provisions, as well as Section 340 of the Criminal Procedure Code<sup>32</sup> which supplements article 22(1) of the Constitution, only give the accused in a criminal case the right to engage counsel if he is financially able to do so.<sup>33</sup> Thus, under the present state of the law in India, there is no constitutional requirement respecting legal aid, and the indigent's only recourse is to turn to legal services voluntarily provided by the central and state courts and governments, bar associations and legal aid societies.

#### LEGAL AID SERVICES AT THE CENTRE

Although the Supreme Court has ruled that it is under no constitutional obligation to do so, the Court has provided in its own rules for mandatory appointment of compensated counsel in all capital cases<sup>34</sup> and for discretionary appointment of such counsel in other criminal cases,<sup>35</sup> if the accused would otherwise be unrepresented owing to financial circumstances.<sup>36</sup> Such appointed counsel are entitled to reasonable fees for their services as determined by the Court.<sup>37</sup>

In civil cases the indigent may be able to obtain assistance from the Supreme Court Bar Association. In appropriate cases<sup>38</sup> the secretary of the bar association, upon the recommendation of the court registrar, may appoint a member of the association to represent the indigent without fee.<sup>39</sup>

<sup>31</sup>See, e.g., *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Betts v. Brady*, 316 U.S. 455 (1942); *Powell v. Alabama*, 287 U.S. 45 (1932).

<sup>32</sup>Section 340 of the Criminal Procedure Code provides: "Any person accused of an offence before a criminal court, or against whom proceedings are instituted under this code in any such court, may of right be defended by a pleader."

<sup>33</sup>See *Jamardhan Reddy v. State of Hyderabad*, A.I.R. 1951 S.C. 217; *Tara Singh v. State*, A.I.R. 1951 S.C. 441.

<sup>34</sup>See Order XXI (8), S.C. of India Rules, 1966, GAZETTE OF INDIA EXTRAORDINARY, January 15, 1966, at 42.

<sup>35</sup>See Order XXI (25), S.C. of India Rules, 1966.

<sup>36</sup>There are no specific limits on capital or income, but a person who applies for assistance must show to the satisfaction of the court that he is financially unable to obtain the services of a lawyer or to pay court fees. See the section on India (the section is not paginated), 1 *Directory of Legal Aid and Advice Facilities Available Throughout The World*, published by the International Legal Aid Association (2 vols. 1966, loose leaf with supplements) (hereinafter referred to as *Directory of Legal Aid*).

<sup>37</sup>See Order XXI (8), S.C. of India Rules, 1966.

<sup>38</sup>The applicant must show that he is unable to pay the prescribed fees, or, where no such fee is prescribed, that he neither has nor is entitled to property worth Rs. 100 (\$13.00)—excluding his wearing apparel and the subject matter of the suit. See section on India, *Directory of Legal Aid*, *supra*, note 36.

<sup>39</sup>See Koppell, *supra*, note 30 at 227.

Thus, as a result of the rules and practice of the Court and of the activities of the Bar Association, virtually every litigant before the Supreme Court is represented by counsel.

Outside the Supreme Court, however, there is no organized nationwide program that enables persons of limited resources to obtain legal advice or legal aid either free or at reduced cost.<sup>40</sup> This is not to say that the need for such assistance and for such a plan has gone unrecognized. On the contrary, several commissions and conferences have agreed that the provision of legal aid is of fundamental importance, and in August 1962 the Committee on Legal Aid at the Third All-India Law Conference outlined a comprehensive national program for the establishment of legal aid committees in all districts.<sup>41</sup> After the state governments indicated their inability to fund such a program, the Law Ministry of the Central Government began planning for central funding of the program. But the project was discontinued in 1962 because of the emergency created by the Chinese invasion of India, and financial limitations have apparently prevented any further Central Government efforts to extend and fund legal services.<sup>42</sup>

In the absence of an effective national plan, such groups as the Indian Law Institute, bar associations and legal aid societies have sought to fill the gap.<sup>43</sup> These efforts have been hindered, however, by lack of resources and interest on the part of members of the bar.<sup>44</sup>

#### LEGAL SERVICES AT THE LOCAL LEVEL

The type and extent of legal aid available at the local level varies considerably from state to state and area to area, as might be expected in the absence of a nationwide plan. All states apparently afford indigents assistance in capital criminal cases.<sup>45</sup> Outside capital cases, the spectrum runs from the State of Madras, which apparently has no organized plan for legal services, to the State of Maharashtra, which offers a relatively comprehensive scheme for legal aid in both criminal and civil matters.<sup>46</sup> Apparently only the States of Andhra Pradesh, Maharashtra and West Bengal provide for legal services outside court proceedings.<sup>47</sup>

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<sup>40</sup>See section on India, *Directory of Legal Aid, supra*, note 8.

<sup>41</sup>See Koppell, *supra* note 30 at 225-226.

<sup>42</sup>*Id.* at 226.

<sup>43</sup>For example, in Delhi, the Bharat Sevak Samaj Legal Aid and Advice Society, assisted by small grants from the government of India, handles a small number of indigent cases. Most of these cases have been civil, and the Society apparently has been unable to do much in the criminal area. See Koppell, *supra*, note 30 at 235.

<sup>44</sup>*Id.*

<sup>45</sup>*Id.* at 227.

<sup>46</sup>See the section on India, *Directory of Legal Aid, supra*, note 36.

<sup>47</sup>*Id.*

Andhra Pradesh and Maharashtra have generally liberal legal services. Maharashtra, for example, provides free legal assistance in all criminal cases if the accused's annual income does not exceed Rs. 2,500 (\$325.00).<sup>48</sup> (The limit is Rs. 1,800 or \$234.00 for members of the backward classes.) Assistance is also rendered in civil cases if the indigent's annual income does not exceed Rs. 1,800.<sup>49</sup> Special provisions provide for legal aid to both indigent landlords and indigent tenants in the tenancy courts of the state and to Indian soldiers and their families.<sup>50</sup>

Other states are less generous and circumscribe legal services in various ways. Some, for example, limit the class of eligible recipients by tests other than income;<sup>51</sup> others impose severely low income limitations;<sup>52</sup> and still others give assistance only in criminal cases.<sup>53</sup> Moreover, when an applicant does obtain legal assistance, he cannot choose his lawyer, but must accept a lawyer appointed by the court. In civil cases the indigent's lawyer cannot settle or compromise the subject matter of the suit without the consent of the court, and court fees are a first charge on any money or property the indigent may recover in the proceedings.<sup>54</sup>

#### OBSERVATIONS

Measured against an ideal standard, legal services in India are less than impressive. Only in capital criminal cases is an indigent assured legal counsel, and legal assistance outside of court proceedings is extremely limited. No steps have yet been taken to provide legal services for persons of moderate means.

Viewed in the context of its grave economic problems, however, India's efforts to provide at least indigents with legal assistance appear more commendable. Indeed, in light of the overriding need to assign as many resources as possible to agricultural and industrial development, the provision of any kind of legal services may be regarded as an outstanding achievement.

Moreover, India has shown an awareness of the importance of a nationwide, comprehensive legal aid program and has drafted several feasible

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<sup>48</sup>*Id.*

<sup>49</sup>*Id.*

<sup>50</sup>*Id.*

<sup>51</sup>Bihar, for example, limits assistance to members of the Scheduled Castes ("untouchables") or of the Scheduled Tribes (remnants of aboriginal tribes not assimilated into society). *Id.*

<sup>52</sup>Kerala, for example, limits assistance in civil cases to members of the Scheduled Castes or of the Scheduled Tribes, and imposes an annual income limitation of Rs. 1200 (\$156.00). *Id.*

<sup>53</sup>The State of Mysore so limits its legal aid services. *Id.*

<sup>54</sup>*Id.*