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## II. COUNTRY AND AREA STUDIES

### *ASIA*

#### **LEGAL AID IN ASIA: a Basic Human Right?\***

Clarence J. Dias\*\*

##### **I. From Legal Aid to Legal Resources: Into the "Alternative" Development Decade of the Eighties**

During the 1960s and 1970s, Asia witnessed a significant expansion of legal aid programs sponsored by government, professional or social work agencies. Legal aid in developing countries has had its roots in the tradition that it is the responsibility of the legal profession to provide legal services to all, regardless of financial position. Jurisprudential concepts of "equality before law," "equal protection of law" and "rule of law" have provided, in the past, the rationale for legal aid in Asia.

In most Asian countries during the years after independence, however, there began to emerge a new interest in legal aid as an instrument for achieving distributive justice. This interest responded to growing political and social pressures within these countries for a more egalitarian as well as a more prosperous society. But there was considerable skepticism as to whether expanded programs of legal aid for the poor would measurably remedy the poverty of low-income groups in developing societies. A more realistic view was that such programs might contribute to the economic well-being of the poor through a more effective implementation of social welfare legislation and through an elimination of employment discrimination. But such legal aid programs could only marginally attack the problems of unemployment, landlessness, and lack of education: the underlying causes for the pervasive poverty of developing societies. Thus, legal aid movements in Asia seemed, initially, unwilling to shift from a conventional jurisprudential rationale based on "equality" to a more

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\*\* President, International Center for Law in Development.

socially significant (and more radical in terms of political economy) jurisprudential rationale based on “equitable redress” of historical inequities.

In his keynote inaugural address at the Sixth Lawasia Conference (held at Colombo, Sri Lanka in 1979) an eminent Philippine lawyer, Jose Diokno, described the post-independence situation in Asia in the following words:

In far too many [countries of Asia] trade unions and associations of farmers, fishermen, urban poor and students are undermined, their leaders hounded or imprisoned; women are exploited for vice; labour is kept cheap as an attraction for multinational investment; academic freedom is seriously curtailed; whole communities are uprooted to facilitate military operations or economic projects; and while millions are spent on the military and on infrastructure for tourism and for commerce, the vast masses of the people have nowhere to live but in miserable hovels, numb with hunger, wracked by disease, condemned to a near-mindless existence.

With some notable exceptions, we of the law have refused to see or to concern ourselves with this stark reality other than by providing free legal aid—the lawyer’s way of giving alms to the poor. This is no longer enough.

Asia is in turmoil but it is the turmoil of life, not death; of the movement of people struggling, sometimes successfully and sometimes not, but always with single-minded determination, to create a better, more human—and more humane—society for themselves and their children; and if we of the law are to play a meaningful part in this struggle, we must use every resource of knowledge, of experience and of skill that Asian lawyers have to offer.

Jose Diokno’s call for Asian lawyers to “use every resource” in the struggle against mass impoverishment has been echoed several times in other countries in Asia.

Speaking at the Silver Jubilee Celebration of the Universal Declaration of Human Rights at the Banaras Hilton University, W. Paul Gormsley argued:

Since India . . . has already completed 25 years of independence, the question may be raised whether or not the Fundamental Rights enshrined in our Constitution have any meaning to the millions of our people to whom food, drinking water, timely medical facilities and relief from disease and disaster, education and job opportunities still remain unavailable.

A response to this question was provided in a judgment of the Indian Supreme Court by then-Justice Bhagwati (now Chief Justice of the Su-

preme Court for *all* Indians and indeed for *all* in India) who articulated a concept of law as a resource in the struggles of the poor against conditions of abject poverty:

Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty; utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce? The only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realize their economic, social and cultural rights.

Justice Bhagwati goes on to initiate reforms supporting such a restructuring of the social and economic order, by reforming the structures of administration of justice:

The time has now come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. . . .

So far the courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the doors of justice. But, now for the first time the portals of the court are being thrown open to the poor and the down-trodden, the ignorant and the illiterate, and their cases are coming before the courts through public interest litigation which has been made possible by the recent judgment delivered by this Court. Millions of persons belonging to the deprived and vulnerable sections of humanity are looking to the courts for improving their life conditions and making basic human rights meaningful for them.

Reforming procedural laws relating to *locus standi*, so as to make it easier to initiate "public interest litigation" on behalf of the poor masses, is indeed a most necessary first step. But throwing open to the poor the portals of the court is not enough. The poor must be assured of the legal resources needed to enter such portals and effectively challenge structures that perpetuate their impoverishment. In several Asian countries, innovative legal aid programs have sought to generate such legal resources for the poor.

## II. Legal Aid in Indonesia: the contribution of the Lembaga Bantuan Hukum (LBH)

The decade spanning the mid-seventies has witnessed a dramatic growth of legal aid organizations in Indonesia. (See the article by Mulya Lubis, *infra* this Volume.) Adnan Buyung Nasution (one of the pioneers of legal aid in Indonesia) estimates that at least seventy percent of all existing legal aid organizations (including the LBH which he heads) were established during this period. Concrete steps to establish legal aid organizations in Indonesia began in 1967-68, as a strong reaction by a few intellectuals, journalists and human rights activists, against a wave of preventive detentions, arrests and other forms of repression launched by the government. However, with the controlled opening towards political freedom by the New Order government of General Suharto, legal aid began to become more closely linked with national development policy. The New Order government has promulgated a development strategy of "equitable distribution." The State Policy Guidelines of 1978 (GBHN) gave fullest expression to this strategy by asserting that the policy of the New Order government was "to open the main path of equitable distribution of opportunity to obtain justice." The process of implementing the national development plan has generated a number of side-effects, however. Foremost among these has been the forcible eviction of people from lands they had traditionally occupied and worked, simply because the policy of town development (in Jakarta, for example) so decreed. There was thus an explosion in the need of the people, especially the poor, to obtain justice based upon regularized, institutionalized settlements. This need stimulated the growth of legal aid organizations in Indonesia. The growth of legal aid organizations in Indonesia, in turn, has stimulated efforts for structural changes aimed at the goal of a more just society. With the spread of legal aid organizations, more possibilities were opened up for the poor to obtain legal services and thus the opportunity to receive justice. Increased legal aid activity has had a subsequent effect on governmental authorities and legal aid practitioners alike. Both have been rendered more sensitive and responsive to the legal needs of the poor. The growth of legal aid organizations has provided increased opportunities for making the laws more effective and for institutionalizing all forms of participation in this process. This growth has also intensified efforts towards law reforms in Indonesia.

The official perspective emanating from the New Order government (as stated in the GBHN) envisaged a narrow, "traditional," "legalistic" approach to legal aid. In the words of Mulya Lubis (a prominent legal scholar and legal aid activist), "in the government's conceptualization of the Development Trilogy, law comes after the distribution of economic growth and stability." Both law and justice have been placed at the very

end of the "eightfold Path of Distribution" in the government's formulation, with "stability" receiving greatest emphasis over distribution and justice. This official conception of law and justice led to a traditional and individualistic conception of legal aid. In Indonesia, this *individualistic concept of legal aid* has been described by Mulya Lubis as follows:

The . . . [concept] is one which is basically in line with the existing legal system. Here the concept implies legal aid in any individual case where a defence is justified in the eyes of the law. The main emphasis is on the *law* itself, and the law is always regarded as neutral or egalitarian. Often, however, law is not justice. In these instances, to view the law as neutral is to benefit those who have wealth and power at the cost of the poor masses. From this perspective, legal aid has no power to achieve justice. 'Justice' is caught in its own orbit and becomes static; in fact, it turns into injustice.

Not surprisingly, more and more of those involved in the legal aid movement in Indonesia have become critical of the *individualistic concept of legal aid*. This critical perspective evolved as a reaction to the political, economic and social realities unfolding in the Indonesian mode of development. In particular, the new injustices are seen as accompanying the workings of a legal system responsive only to the needs and wants of the upper levels of the Indonesian social structure. There thus emerged an alternative concept of legal aid in Indonesia. This concept of *structural legal aid* can best be described in the words of its two main authors. As Mulya Lubis puts it:

The concept of structural legal aid is tied to the destruction of injustices in the social system. It is directed not merely towards aiding individuals in specific cases, but towards an emphasis on cases which have a structural impact. Legal aid becomes the power to move in the direction of restructuring social order so that a more just pattern of relationships can be established. Law, in and of itself, cannot address the question of injustice. Indeed, it often strengthens the status quo because it is obliged to be neutral. Once one accepts that society is neither just nor egalitarian, then one must reject neutrality in favour of supporting the weak in their confrontation with the strong. Structural legal aid, therefore, places itself on the side of the weak who form the majority of the population. The legal struggle must be oriented towards creating a law that is supportive of the weak.

Buyung Nasution elaborates the concept of *structural legal aid* further:

Structural legal aid shall consist of a series of programmes, aimed at bringing about changes, both through legal means and in other lawful ways, in the relationships which form the bases of social life, towards more parallel and balanced patterns. This is the essential pre-condition for the development of laws which provide justice for the majority of the poor in Indonesia.

At the operational level, structural legal aid must reach out to rural as well as urban areas; it must actively search out those cases to defend or initiate which most involve the public's collective interest, and those cases, undertaken in the interests of the poor, which create the opportunity for providing legal education to that broad public of labourers, peasants and fishermen.

On the societal level, therefore, structural legal aid is a growing power by means of which legal aid activities can positively influence and create conditions for law development fitting the people's needs.

In 1978, at a National Legal Aid Workshop held for all legal aid organizations in the country, the *structural legal aid* concept was adopted as the guiding principle for the work of all participating legal aid groups. In 1980, at a second National Legal Aid Workshop, the concept was developed further. At that workshop, a formulation was agreed which stated that the main objective of structural legal aid is "conscientization" as a means to gradually change the unjust social structure. Clearly, conscientization must be accompanied by organizational efforts as well.

Structural legal aid faces many constraints in Indonesia. Beyond the courtroom, legal aid activists encounter difficulties in their conscientization programs, their research, and their teaching. The government frequently denies them permission to engage in research which would bring them into close touch with the masses. Political cases are insulated from legal aid, since legal aid lawyers are not allowed to handle cases where subversion charges have been brought against the defendants. There are significant procedural obstacles, too. The New Code of Criminal Procedure (HAP) states that legal aid lawyers may observe the course of initial interrogation of defendants, but they cannot be physically present at the time of interrogation. In many police stations, interrogation rooms have a glass partition which permits legal counsel to *see* what is happening but not to *hear*. As Lubis puts it, "If HAP seems to provide a door through which legal aid can be rendered, it remains a closed door, even if it is a transparent one." The government is concerned that an unopposed legal aid movement can become an alternative power base. For this reason, it has attempted to co-opt the movement by taking the initiative to unify all legal aid organizations under one umbrella organization. Similar tactics have been used to control organizations of workers, farmers, journalists, and the youth. Centralization simplifies control and facilitates co-optation.

But despite the above constraints, *structural legal aid* is alive and well in Indonesia. In the words of Buyung Nasution:

The concept is being implemented through a variety of programmes and actions which, hopefully, will be able to raise various forms of

active participation by the masses—imprisoned as they are by structures of poverty and injustice—in the search for a more just social life.

### **III. Legal Aid in the Philippines: the Contribution of the Free Legal Assistance Group (FLAG)**

The experience in the Philippines is very similar to that in Indonesia, so far as legal aid is concerned. Jose Diokno, perhaps the most prominent legal aid activist and human rights lawyer in the Philippines during the past decade and a half, describes the following trend in the Philippines. Before martial law, legal aid was apolitical. The Philippine political system was a functioning democracy with a constitution and laws that respected human rights, an independent judiciary, a socially-concerned legislature, and a press that was among the most liberal in the world. Given these conditions, relatively few lawyers questioned the system but strove instead to make the system work as it should. Legal aid concentrated on enforcing legal rights, with occasional proposals to amend the law.

Martial law brought about a dramatic and dismal change. Jose Diokno describes these changes:

By destroying all semblance of democracy; by abolishing Congress and impairing both the independence and the powers of the Judiciary; by controlling all communications media and managing the news; by stifling criticism except when it was ineffective; by outlawing strikes, peaceful public meetings, and student councils; by hounding and harassing lawyers, leaders and organizers of trade unions and of student, peasant and slum dweller organizations; by resorting to arbitrary arrests, prolonged detentions under inhuman conditions without charges or trial, torture, degradation and executions formally unofficial but officially sanctioned of what it is pleased to call "subversives"; by justifying itself with the assertion that "western-style" democracy is not fitted in the Philippine temperament, needs, traditions and values, although that system had functioned, with more or less success, for the past 70 years - in short, by spreading a chilling climate of fear over the nation and by steadily militarizing social institutions, martial law has led lawyers and laymen to question not only the political system of martial rule, but even the social, economic, military, and cultural structures, national and international, that led to martial law and nurture, sustain and prolong it. As a consequence, martial law added a new dimension to legal aid: by politicizing lawyers and laymen, it has politicalized legal aid.

Legal aid practitioners in the Philippines have been adapting to martial law society and have sought to develop an approach to legal aid "in a neo-colonial, dependent, developing society under authoritarian rule." Spearheading this effort has been FLAG, under the very active leadership of Jose Diokno. FLAG initially concentrated on defending political pris-



oners, but today continues not only in defending such prisoners but also “the poor, the dispossessed and the oppressed whose struggles for justice expose them to arrest and detention.” FLAG has evolved what may perhaps be termed a *meta-legal approach* to legal aid. Jose Diokno explains this approach by contrasting it with the traditional approach to legal aid:

Legal aid has traditionally viewed its function as providing legal solutions to legal problems of the poor by indicating their legal rights. This is a valuable function in itself: every triumph of justice is cause for celebration. Unfortunately, legal aid limited to this traditional function contributes little, if anything, to development. . . . The reason is that traditional legal aid accepts uncritically the basic rightness of the legal order and of the social system and institutions within which it operates. . . . Its thrust is to uphold the law, not to transform society. Its method for legal change is gradual and incremental, not abrupt and radical. But development is social change, often fundamental and rapid. So traditional legal aid is of limited value to development.

Traditional legal aid is, in fact, the lawyer’s way of giving alms to the poor. . . . Traditional legal aid redresses particular instances of injustice but does not fundamentally change the structures that generate and sustain injustice. And like alms, traditional legal aid carries within it the germ of dependence. . . . Traditional legal aid can retard rather than promote development: for above all else, development is human development.

To contribute effectively to development, legal aid should politicize its traditional function. Legal aid lawyers should determine whether their clients’ legal difficulties are personal problems or social problems, that is, whether they affect only their clients or an entire social sector or community. If the latter, they should involve their clients in seeking the specific social cause of the legal problems, the particular social structure and social forces that generate them, and together attempt to work out both legal and social solutions. The resulting awareness of the social causes of injustice will evoke the determination on the part of lawyer and client alike to change law and society to correct injustice. And that is the beginning of development.

Social awareness can be heightened if legal aid makes full use of its educative function. By publishing legal primers in the language of the people, by training paralegals, by conferences with clients, and, insofar as possible, by the way litigation is conducted, legal aid lawyers can teach people not only what their legal rights are, but also what these rights should be; and, equally important, how inadequate existing legal processes and institutions often are to vindicate those rights, and why they are inadequate.

Heightened awareness of problems and causes, however, will not lead to action - in fact, it can lead to apathy - unless it is coupled with awareness of possessing power to act. So legal aid lawyers should encourage the people they serve to organize themselves and act collectively with others similarly situated; and to invent and use *meta-legal tactics*, mass actions that transcend ordinary legal procedures without openly defying existing law, in order to exert pressure for change in law and society.

FLAG's approach to legal aid reiterates the following core principles:

- a) Legal aid lawyers must strive to be constantly aware of what their clients want and help them get what *they* want.
- b) Legal aid must be critical and creative. It must take advantage of every occasion to arouse the conscience of those in power to the inhumanity of the system they maintain and how it contradicts the very values they proclaim; and by thus weakening their belief in their righteousness, to dispose them to do justice and accept change.
- c) Legal aid should not limit its advocacy to individual rights. It should seek to vindicate collective rights as well.
- d) One danger should zealously be guarded against: the tendency to direct the activities of legal aid clients. Legal aid lawyers must always be conscious that their role is purely supportive. Their task is to carry out decisions of those they serve to the extent that this can be done legally, not to make decisions for them.

The FLAG approach to legal aid is very vitally concerned with the concepts of *development* and *justice*. So far as *development* is concerned, the priority is human development above all else. Although legal aid can contribute to human development, its contribution will not be decisive. The lesson learned is that, to win justice, the poor, the dispossessed and the oppressed—who are the people—must rely not on legal aid, but on their own organized efforts. In the end, justice will be won only by social liberation. And, to be real, liberation must be self-liberation.

So far as *justice* is concerned, the emphasis is on a Filipino concept of justice. As Jose Diokno urges, by turning in on their own society, Filipinos will find “that there is a Filipino concept of justice; that it is a highly moral concept, intimately related to the concept of right; that it is similar to, but broader than, western concepts of justice, for it embraces the concept of equity; that it is a discriminating concept distinguishing between justice and right, on the one hand, and law and argument, on the other; that its fundamental element is fairness; and that it eschews privilege and naked power.” This concept of justice reiterates that people

as national communities have three basic rights: the right to survive; the right to external and internal sovereignty; and the right to development.

Lawyers, in the Philippines, must address twin tasks. First, they should work to ensure that law does not itself become a mechanism through which social injustice is committed. This injustice could come about in three ways: first, by not having a system of law at all, written or unwritten, or one so flawed that people do not know what their legal rights and duties are; second, by not enforcing law fairly; and third, by enacting law that does not pursue the social values that constitute the Filipino vision of a just society, or that adopts means which subvert those values.

Moreover, lawyers must strive to ensure that law does become a mechanism through which social justice is achieved. In the stirring words of Jose Diokno:

To attain the Filipino concept of social justice, laws, policies and institutions must, besides promoting respect for individual and collective human rights, also consciously strive, by effective means:

One, to eradicate poverty, at first in its most degrading forms and effects and afterwards in all its forms;

Two, to select a means of developing and using our natural resources, our industries and our commerce to achieve a self-directed, self-generated, and self-sufficient economy, in order to produce enough to meet, at first, the basic material needs of all and, afterwards, to provide an increasingly higher standard of living for all, but particularly for those with lower incomes, and to provide them with enough leisure to participate creatively in the development and enjoyment of our national culture; and

Three, to change those relations and structures of relations between man and man, between groups, and between communities that cause or perpetuate inequality, unless that inequality is necessary to improve the lot of the least favored among our people and its burden is borne by those who heretofore have been most favored.

These standards embody two different principles: the first, a principle of reparation that looks back to repair the injustice inflicted by society on the poor and the oppressed; and the second and third, a principle of change that looks forward to effect the internal and external revolutions of which Mabini wrote, in order to attain the aspiration that Jacinto articulated: that a Filipino's worth, who he is, should not depend on what he has.

The above approach to legal aid, pioneered by Jose Diokno, is vigorously pursued by FLAG. Moreover, the seeds sown by FLAG have blossomed in Filipino hearts and minds alike. Other social action groups

in the Philippines, such as INDEX (with its monograph on *Career Paths in Alternative Law: Towards a More Just and Human Society*), BATAS (with its series of "paralegal" training workshops for development workers), PROCESS (with its legal resource development programs), and the Movement for Alternative Law in the Philippines, are forging ahead under extremely adverse conditions on the trail blazed by Jose Diokno and FLAG.

#### IV. Social Action Litigation: the Indian Contribution

The birth of social action litigation (SAL) in India has been well chronicled by Upendra Baxi (a legal activist who has played no small role in both the conception and midwifing of SAL):

During the 1975-76 emergency, legal aid to the people was one of the key points of the 20-point programme launched by Indira Gandhi, to which Justices Krishna Iyer and Bhagwati, themselves deeply committed to the spread of the legal aid movement, readily responded. They led a nationwide movement for the promotion of legal services. They organized legal aid camps in distant villages; they mobilized many a high court of justice to do *padayatras* (long marches) through villages to solve people's grievances. They sought, through 'camps' and *lokadalats* (people's courts) to provide deprofessionalized justice. They also, in their extracurricular utterances, called for a total restructuring of the legal system, and in particular of the administration of justice.

As a result of the activities described above, several Supreme Court and High Court judges became exposed to problems of the poor and suffering and this laid the basis for the judicial populism needed to give birth to SAL. The immediate period following the end of the Emergency witnessed considerable euphoria at the return of liberal democracy. Moreover, the historically unprecedented period of repression during the Emergency served to radicalize marginally the middle classes and professional groups, including judges. Thus, SAL may be seen as an expiratory syndrome, as an aspect of post-Emergency catharsis: with judges, lawyers and the press seeking to vindicate themselves and reestablish their claims to moral leadership. In the post-Emergency period, the Supreme Court of India devised SAL as a means of throwing open its portals to "the poor and the downtrodden, the ignorant and the illiterate." This was done by reforming procedural rules relating to *locus standi*, to enable the bringing of virtual class actions; by creation of "epistolary" jurisdiction invoked by the writing of letter-petitions to the court; and by the creation of *ad hoc* sociolegal commissions to help the court investigate the facts set out in the letter-petitions. The court was also in the process of evolving a new constitutional jurisprudence; one that breathed life into the fun-

damental rights' provisions of the Indian Constitution. The results of this wave of judicial populism and judicial activism were unprecedented, as is described by Upendra Baxi:

Under trial as well as convicted prisoners, women in protective custody, children in juvenile institutions, bonded and migrant labourers, unorganised labourers, untouchables and scheduled tribes, landless agricultural labourers who fall prey to faulty mechanization, women who are bought and sold, slum dwellers and pavement dwellers, kins of victims of extrajudicial executions—these and many more groups now flock to the Supreme Court seeking justice.

They come with unusual problems, never before so directly confronted by the Supreme Court. They seek extraordinary remedies, transcending the received notions of separation of powers and the inherited distinctions between adjudication and legislation on the one hand and administration and adjudication on the other. They bring, too, a new kind of lawyering and a novel kind of judging.

They also bring a new kind of dialogue on the judicial role in a traumatically changeful society.

Much of SAL, in its earliest phase, arose from letters written by individuals to then-Justice P.N. Bhagwati, in his twin capacities as a Justice of the Supreme Court and as Chairman of the National Committee for the Implementation of Legal Aid Schemes (CILAS). Initially, SAL emerged in India through an uncoordinated use of law by diverse legal activists in the universities, the bar, the bench, and the media. For a review of the range and scope of SAL in India we turn once again to Upendra Baxi:

- a) Four law professors issued an open letter to the Chief Justice of India sharply criticising its decision acquitting police constables accused of committing rape of a tribal woman within the confines of a police station, on the specious ground that because she did not resist she must have consented to sexual intercourse. This created a nationwide controversy, led swiftly to a bill proposing an amendment of the criminal law relating to rape, and a protest march by women's organizations to the Supreme Court seeking a review of the decision.
- b) The Supreme Court of India, acting on complaints by or on behalf of prisoners, has revolutionised, normatively at least, prison jurisprudence.
- c) Journalists have sought intervention of the Court to prevent the buying and selling of women (the Kamala case), the torture of

Naxalites in Madras jails, the importation for carnal use of children in a Kanpur prison, and seeking full investigation into extra-judicial investigation of police' encounters' with dacoits resulting in extra-judicial executions of people in the rural areas of Indian states.

- d) Public-spirited lawyers have questioned with remarkable success the long incarceration of people awaiting trial for crimes carrying maximum sentences often under half the period of pre-trial detention already served.
- e) A Bombay-based lawyer group has persuaded the Supreme Court to admit a petition claiming that pavement dwellers in Bombay have a fundamental right under the Constitution to dwell on pavements and has filed a writ claiming access to clean and hygienic drinking water for villagers in Maharashtra.
- f) An agonised Supreme Court is proceeding to fix culpability for the blinding of undertrials in Bihar and has ordered a number of compensatory measures.
- g) Two law professors have filed writ proceedings for violation of constitutional rights of women detained in a protective home for women in Agra and for cruel and sadistic torture of eleven young persons in Madhya Pradesh jails.
- h) A legal sociologist has successfully moved the Court to secure expeditious trial of four boys under detention for seven to eight years for a crime they did not commit.

SAL, although well institutionalized within the Indian judiciary, is still very much in its infancy. Nevertheless, an assessment can be made of its achievements. Upendra Baxi has recently undertaken precisely such an assessment-

Among the gains of social action litigation are: the heightened sensitivities to injustice on the part of a cross-section of the elite, increasingly insistent claims for accountability of the ruling classes and dominant political institutions, a gradual, pro-people renovation of judicial process and values, emergence of a special kind of confidence in the judiciary in its unequal battle with administrative deviance, and crystallisation of informed consensus on the need for fundamental reform of the legal system.

In SAL we are witnessing a virtual social revolution under law and this is especially marked with regard to the courts and to legal aid. So far as the courts are concerned, SAL has truly revolutionized the judicial process to make it: more proactive, less intimidating and more accessible, more inquisitorial and more active in the fact-gathering process, more

effective in securing the accountability of bureaucrats and public officials, and more concerned with monitoring post-judgment compliance.

So far as legal aid is concerned, the impact of SAL is very clearly visible in the Bill, soon to be introduced in Indian Parliament, to establish a National Legal Aid Program for India. The Bill provides support not only for social action litigation but also for a wide range of non-litigation activities ranging from conciliation to legal literacy and paralegal training programs. The future of legal aid in India seems very much linked with that of SAL, and, indeed, the preamble to the National Legal Services Bill stresses that the prime objective of legal aid in India is to promote the “revolutionary use of law for securing social justice to the common people.”

#### V. A Legal Resources Approach: an Asian Alternative to Legal Aid

In India, Indonesia and the Philippines, legal activists have moved from a concept of *legal aid* (with its patronizing connotations) through a concept of *legal services* (emphasizing law and lawyers as needing to be in the *service* of the poor) to a concept of *legal resources* (emphasizing law as a *resource* in the empowerment of the impoverished).

The legal resources approach differs in many ways from conventional notions of legal aid delivered by professionals. Legal aid programs designed and operated entirely by professional lawyers are limited to provision of a narrow range of largely court-centered services to individuals (rather than to groups and collective needs). These programs (created and managed *ex parte* by elites) usually “deliver” “legal aid” on a charitable, handout basis. Where legal services are controlled and allocated by legal professionals, programs to provide this help typically reflect “top-down” efforts, managed by elites, to help the poor for purposes and by means which are defined by the professionals—to meet needs prioritized by those who control the program. The “legal aid” lawyers may tend to monopolize the task of articulating and advocating claims of poor and “ignorant” clients, or to monopolize the task of identifying the underlying needs of the client—and the strategies to address those concerns. While poor families may be individually helped in some ways by this kind of legal assistance, communities are still left dependent on professionals—and all too often people remain essentially ignorant of their legal rights and of different ways they can follow to assert and vindicate them. Moreover, crucial objectives of “people-centered” development—such as the generation of capacities for “participation” and “self-reliant” determination of the ends and means of collective action—are often subverted; social relationships between the poor and those with whom they must contend

may remain essentially unchanged; and new sources of power are seldom generated within communities. The legal aid approach may provide *access to law* but it seldom encourages people to seek *access to justice through law*. The legal resources approach encourages people to seek both, if necessary, by helping them to understand their existing rights under law and by helping them to devise their own strategies to bring about reform of unjust or inadequate laws.

The legal resources approach emphasizes concepts of *legal self-reliance*, *deprofessionalization*, and *interest-group advocacy*. *Legal self-reliance* is to be achieved both through programs seeking to educate specific poverty communities about their rights and the laws and procedures relevant to their day-to-day activities so as to enable them to decide for themselves when and how to take recourse to law and when not to. *Deprofessionalization* is to be pursued through an attempt to break the legal profession's monopoly over legal knowledge and skills by developing, wherever appropriate, community-based paralegals. *Interest-group advocacy* seeks to enhance countervailing power of organizations of the urban and rural poor by advocacy of their interests in national centers of decision making through specialized national and international organizations which work with local groups.

The legal resources approach, as it has evolved in India, Indonesia and the Philippines, highlights the following interrelated emphases essential to an effective program of legal assistance:

- a) Collective and not purely individual rights are emphasized.
- b) Goals of *participation* and *self-reliance* in the delivery of legal assistance are emphasized. As Buyung Nasution expresses it, "legal aid activists must consciously guard themselves against the professional elitism of so many lawyers and their organizations must not be separate, or insulated, from the clients they are intended to serve. To which, Jose Diokno would add a plea for professional humility. The creation of legal resources for the poor must, in itself, be a participatory process. People must determine, for themselves, not only what their essential needs are, but whether, when and how law may be used to secure those needs.
- c) Seeking to redress both injustices and inequalities are emphasized, and, more importantly, the social, economic, and political structures which produce and reproduce such injustices. Thus legal aid activists must proceed from a jurisprudential rationale that goes beyond *access* or *equality* and encompass *redress of historical inequities*.



- d) Helping develop organizations of victim groups and victim peoples are emphasized. There is a close *complementarity between developing participatory organizations and developing capacities among the rural poor to meet their legal needs* themselves. Individually, the rural poor cannot usually secure the legal resources needed to press claims for other resources essential to their needs; only through organization can they gain the necessary knowledge, aggregate their claims and amass the numbers to press them. In turn, the process of developing organizations in the face of resistance from vested interests requires organizational capacity to use law and legal resources to defend the group.
- e) Helping to secure public accountability of bureaucrats and government officials is emphasized. The Indian experience shows how effective and important SAL is in combating governmental lawlessness whose brunt is, inevitably, most acutely felt by the impoverished and the powerless.

The experience in India, Indonesia and the Philippines also indicates the importance of legal activists working on law reform to create a favorable *legal environment* in three areas:

- i) *Human rights law* is essential for the empowerment of the poor, for their participation in governance, and to secure their entitlement to resources to meet basic material and non-material needs.
- ii) *Redistributive legislation* must seek to redress the historically prevalent, inequitable and grossly skewed distribution of power and basic resources which typify most Asian societies.
- iii) *Administrative law* must whittle down illegitimate areas of governmental immunity from legal process, and help to secure the public accountability of government officials, thus minimizing the abuse of power and the growth of governmental lawlessness.

In most countries in Asia, legal aid has come to be viewed as providing much more than just one's day in court. We, in Asia, have been developing uniquely Asian approaches to legal aid which link legal aid intimately with both justice and human development. Legal aid is no longer a matter of benign paternalism in Asia; it has emerged as a human right which is not only being increasingly claimed and asserted but also increasingly realized. Indeed, for some countries in Asia, legal aid may well prove to be the harbinger of a legal revolution accompanying and assisting major social transformation towards a just and humane society.

*Reference Materials*

This paper describes the models of legal aid in the Philippines, Indonesia and India by drawing heavily upon the following sources:

1. Jose Diokno, *Justice Under Siege: Five Talks*, Nationalist Resource Center, Manila (October 1981).

2. Buyung Nasution, *The Legal Aid Movement in Indonesia: Towards the Implementation of the Structural Legal Aid Concept* in ACCESS TO JUSTICE: HUMAN RIGHTS STRUGGLES IN SOUTH EAST ASIA (H. Scoble & L. Wiseberg eds. 1985).

3. T. Mulya Lubis, *Legal Aid: Some Reflections* in Scoble & Wiseberg *supra* note 2.

4. Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation Before the Supreme Court*, DELHI L. REV. Nos. 8 & 9 (1979).

5. Upendra Baxi, *Law, Struggle and Change: An Agendum for Activists*, SOCIAL ACTION, No. 35 (1985).

6. Clarence Diaz, "Social Action Litigation in India: a Revolution Under Law"; Keynote address delivered to the Workshop on Social Action Litigation organized by the International Centre for Ethnic Studies at Colombo, Sri Lanka, May, 1985.

This paper draws even more heavily on the other writings and legal activism of Jose Diokno, Buyung Nasution, Mulya Lubis, Upendra Baxi and the ongoing, inspiring struggles of action groups in Asia (such as PROCESS BATAS, CAP) to help make law a resource for the impoverished and powerless.

