Improving Women's Access to Free Legal Aid: Are Female Community Paralegals a Force to Reckon With?

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Abstract: *Free legal aid mechanism in the country is marred by several issues such as the poor implementation of laws, sub-optimal financial management, poor legal services provided by legal aid lawyers, lack of proper training of human resources, etc. These issues adversely affect access to legal aid for the poor, weak, and marginalized and ultimately hinder their access to justice. Women are particularly disadvantaged in this regard due to the additional and unique socio-cultural and psychological barriers they encounter on the road to justice. This paper explores the role of female community paralegals in the legal empowerment of women. This is done specifically in the Indian context; however, lessons are also drawn from other patriarchal societies where women are similarly marginalized due to gender-discriminatory norms. It studies barriers that hinder a woman's access to justice in the specific context of violence and harassment of women belonging to low-income households. Further, this paper positions female community paralegals as playing a key role in enhancing women's access to justice under the theoretical underpinning of legal empowerment. It proffers that the legal aid machinery needs to tap into the potential of female community paralegals and enhance their abilities to become active agents of social change. It aims to establish a strong case in favour of increasing the number of female community paralegals in the country, to make them more visible and accessible to women in distress. It emphasizes that empirical research must be carried out to survey the local population and determine the appropriate number, distribution, and diversity of female paralegals required.*

Keywords*:* ***Free Legal Aid, Female Community Paralegal, Women's Access to Justice, Legal***

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I. INTRODUCTION

Free legal aid aims to ensure equal and effective justice for the poor, disadvantaged, and marginalized sections of society. It strives to realize the constitutional goals of equality before the law, equal protection of laws, and the right to life.[1] The Constitution of India provides that 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 due to economic or other disabilities."[2] In the landmark judgment of *Hussainara Khatoon v. State of Bihar*, the Hon'ble Supreme Court of India held that "legal aid is nothing

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[1] India Const.art.14, 21.
[2] India Const.art.39A.

else but equal justice in action. Legal aid is in fact the delivery system of social justice."[3] In India, the Legal Services Authorities Act 1987 also provides "the right to free legal aid to several disadvantaged sections of society, women being one among them."[4] The Act was brought in to bridge the gap between the weaker sections of society and the formal legal system. However, despite the noble intention, Constitutional provisions, Supreme Court Judgements, and dedicated legislation in place, the legal aid movement in India has failed to achieve its aim.[5]

Free legal aid mechanism in the country is marred by several issues such as the poor implementation of laws, sub-optimal financial management, questionable quality of services provided by legal aid workers, scattered distribution of legal aid lawyers, lack of proper training of human resources, etc.[6] These issues adversely affect access to legal aid for the poor, weak, and marginalized and ultimately hinder their access to justice. Women are particularly disadvantaged in this regard as they encounter additional socio-cultural, economic, and psychological barriers that are traditionally unique to them. Gender discrimination in society permeates all its institutions. The justice system is no exception. This aggravates a woman's distress as perpetrators violate her rights with impunity[7]. Additionally, limited participation by women in decision-making platforms severely limits their capability to access justice.[8] State action in the form of legislation has had little effect on the ground and justice remains elusive for many women. This is especially true for women from economically weaker sections of society who have little or no support in accessing the legal resources of the State.[9] For them to obtain meaningful access to justice targeted action needs to be taken.

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[3] AIR 1979 SC 1377 ¶ ¶ 6-7.

[4] Legal Service Authorities Act,1987, § 12.

[5] Hon'ble Justice B.S. Chauhan, *Making Legal Aid a Justice for Women from investigation to decision – a reality through sensitized Judiciary,* NIC UTTAR PRADESH (Mar.27, 2023) (hereinafter 'Dr. Justice B.S Chauhan') https://upslsa.up.nic.in/speech2.pdf.

[6] Tata Trust, India Justice Report 2022 (2023) (hereinafter, 'India Justice Report'); https://www.tatasustainability.com/pdfs/Resources/India_Justice _Report_2019_-_Tata_Trusts.pdf

[7] World Bank, *Increasing to Access to Justice* in Fragile Settings (2023); https://documents1.worldbank.org/curated/en/099101123141530374/pdf/P17955108fb2a104e0a55e04b0257738ea3.pdf

[8] UN Women, *Progress of The World's Women: In Pursuit of Justice* (2011) (hereinafter 'UN Women') https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2011/ProgressOfTheWorldsWomen-2011-en.pdf

[9] Multiple Action Research Group (Marg), *Needs Assessment Study of The Legal Services Authorities in The States of Madhya Pradesh, Jharkhand, Bihar, Uttar Pradesh, Odisha, Rajasthan And Chhattisgarh* (2012) (hereinafter 'MARG'). https://www.ngo-marg.org/what-we-do/governance/need-assessment-study-of-7-state-legal-services-authorities-in-india/

In such a scenario, the legal empowerment of women seems to be a plausible solution. Legal empowerment entails a bottom-up approach to strengthen and enable individuals to claim their rights and live with dignity. It encompasses measures that initiate change at the grassroots. One such method is community-based paralegal programs. These initiatives are growing in large numbers around the world, as they play an instrumental role in improving access to and quality of legal services. Community paralegals play a significant role as they empower communities by improving legal literacy and imparting basic legal knowledge[10]. They are credited by scholars for ushering in socio-political change and contributing to good governance.[11] Research reveals that women feel comfortable sharing their ordeal with a female paralegal volunteer. They hesitate in approaching male paralegals, especially with issues like sexual harassment and domestic violence. But, the distribution of female paralegals in the country is uneven and their numbers are dismal in most of the states.[12]

In this article, the author exclusively focuses on the role of female paralegal volunteers in improving women's access to free legal aid, being fully cognisant of the fact that this is only a part of the solution to structurally strengthen the free legal aid mechanism in the country. This article explores the role of female community paralegals in the legal empowerment of women. This is done specifically in the Indian context; however, lessons are also drawn from other patriarchal societies where women are similarly marginalized due to gender-discriminatory norms. This article proceeds in five parts. The first part lays out the conceptual framework of this research. The second part studies barriers that hinder a woman's access to legal aid in the specific context of violence and harassment of women belonging to low-income households. The third part studies the role and responsibility of paralegal volunteers in a legal aid system as envisioned by NALSA Paralegal Volunteer Scheme. The fourth part explains why female community paralegals will efficiently serve the purpose of enhancing women's access to legal aid along with examples from India. The fifth part proffers suggestions and provides a conclusion.

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II. CONCEPTUAL FRAMEWORK

[10] SCHULER AND KADIRGAMAR-RAJASINGHAM, LEGAL LITERACY: A TOOL FOR WOMEN'S EMPOWERMENT (1992)
[11] DUNI, FON, HICKEY ET AL., NGOS, SOCIAL MOVEMENTS, AND PARALEGAL EXTENSION IN NORTH WEST CAMEROON: FROM CLIENTELISM TO CITIZENSHIP AT THE MARGINS? (2005).
[12] Tata Trust, *India Justice Report 2019* (2019); https://www.tatasustainability.com/pdfs/Resources/India_Justice_Report_2019_-_Tata_Trusts.pdf

To better understand and appreciate the contextual space in which paralegal programs are envisioned, it is significant to review some key concepts forming the foundation of free legal aid programs in India i.e. – rule of law, access to justice, and legal empowerment.

A. Rule of Law

Rule of law is a cardinal legal principle which in simple terms means that law is supreme. As a concept, the rule of law traces its origins in the work of Greek philosopher Aristotle who elucidates that "in a state that functions on the principles of justice and equality, rule of law must be supreme, and the state as an institution must not be subject to the whims and fancies of its ruler". The doctrine of the rule of law as practiced in modern democratic states today was conceptualised by Prof. A.V Dicey in his book "The Law of the Constitution." Prof. Dicey explains that as per the doctrine of rule of law, all individuals in a state including government officials are subject to rule of law and no one is above the law.[13] This conception of the doctrine of rule of law is part of the basic structure of the Indian Constitution.[14] The Hon'ble Supreme Court of India has on various occasions elucidated the significance of this doctrine. The Court has ruled that equal and effective access to justice for all sections of society is quintessential to the rule of law.[15] Also, that the rule of law performs the essential function of checking the arbitrariness of state actions by holding the government accountable to the law and it is key to good governance and forms the cornerstone of a democratic nation.[16]

The concept of the rule of law has received a fair amount of criticism from legal scholars due to its state-centric approach that works on a top-down model. This in effect, leaves behind the needs of marginalized sections of society.[17] Law often takes shape to suit the interest of the most powerful. Existent power structures in society also reflect the same in its system for the administration of justice. Women have been a particularly ignored lot, as no rule of law

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[13] M/S. K.B. Tea Product Pvt. Ltd. & Anr. v. Commercial Tax Officer, Siliguri & Ors., CIVIL APPEAL NO. 2297 of 2011.

[14] Sub-Committee on Judicial Accountability v. Union of India and Ors. (1991) 2 SCR 741 ("Rule of law is a basic feature of the Constitution which permeates the whole of the constitutional fabric and is an integral part of the constitutional structure.")

[15] Maneka Gandhi v. Union of India (1978) 1 SCC 248.

[16] Sukhdev v. Bhagatram (1975) 3 SCR 619.

[17] Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Carnegie Endowment for International Peace (Working Paper no.41, 2003) (hereinafter 'Golub'). https://carnegieendowment.org/2003/10/14/ beyond-rule-of-law-orthodoxy-legal-empowerment-alternative-pub-1367

initiatives are responsive to the challenges that women face in accessing justice.[18] A report by the International Development Law Organisation states: "The rule of law continues to mean very little for the vast majority of women and girls. Many women are simply unable to access and navigate their way through formal legal institutions. This can be due to structural as well as cultural barriers, including women's inadequate knowledge of rights and remedies, illiteracy or poor literacy, and lack of resources and time to participate in justice processes, especially given the heavy burden of labour that women bear for their families. These challenges are even greater for women who are subject to multiple forms of discrimination based on factors such as being part of indigenous or ethnic minority communities, religious minorities, or sexual minorities, or for disabled women, migrant workers, and women living with HIV/AIDS."[19] The rule of law was a promise to ordinary citizens of a free and fair system devoid of discrimination. However, for women, it has been able to deliver little on the ground.[20] Also, rule of law is applicable in the public domain and injustices in the private domain fall outside its purview, which is where women face most atrocities.[21] This critique of rule of law gave way to legal empowerment which focuses on initiating change at the bottom.

B. Legal Empowerment

Legal empowerment as a concept emerges when law meets development or when law ushers in change that encourages agency.[22] It proffers pragmatic solutions to marginalized sections of society to claim equality and live a life with dignity.[23] Legal empowerment originated as a response to the top-down policy of the rule of law presents a bottom-up approach as an alternative. It shifts focus from institutions to the end user of legal services. It incorporates concepts like equal access to justice and legal aid.[24] However, according to Golub, the

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[18] NYAMU-MUSEMBI, FOR OR AGAINST GENDER EQUALITY? EVALUATING THE POST-COLD WAR RULE OF LAW REFORMS IN SUB-SAHARAN AFRICA (2005).
[19] IDLO, *Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment*,11(2013); https://www.idlo.int/publications/accessing-justice-models-strategies-and-best-practices-womens-empowerment
[20] UN Women, *supra note* 8.
[21] *Id.*
[22] Haki Legal Empowerment Network, *The Legal Empowerment Approach to International Development* (White Paper, Sep.2011)
[23] Tiernan Mennen, *The Mystery of Legal Empowerment: Livelihood and Community Justice in Bolivia* (IDLO, Legal Empowerment Working Papers) 6 (2010).
[24] INEKE VAN DE MEENE AND BENJAMIN VAN ROOJI, ACCESS TO JUSTICE AND LEGAL EMPOWERMENT: MAKING THE POOR CENTRAL IN LEGAL DEVELOPMENT CO-OPERATION, (2008).

fundamental concept of legal empowerment is power and not the law itself.[25]This essentially means looking at the concept of access to justice from the prism of prevailing power structures in society. This determines the negotiation and bargaining power of an individual.[26] When it comes to empowering women, legal empowerment aims to promote gender equality by facilitating greater integration of women in society. It adopts measures to enhance the confidence of women by imparting them the required information, skills, and training that help them to realize their legal rights.[27] At the core of it, legal empowerment ushers in development by empowering and enabling individuals at the grassroots. The fundamental concept of legal empowerment originated way back in 2001 from the annual report of the Asian Development Bank.[28] However, even today, the concept is not properly defined and different organizations have different definitions for it.[29]

The 2009 report of the UN Secretary-General titled "Legal Empowerment of Poor and Eradication of Poverty", defines legal empowerment as a "process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors." [30] This report serves as a guiding light for UN Agencies, member governments, and the international community at large.[31] It provides an expansive meaning to access to justice, with emphasis on legal awareness in communities, access to legal services, and paralegal programs. It highlights the significance of gender equality in accessing legal services and argues that targeted legal empowerment initiatives are a must for women and especially for rural women. As per the report, all developmental efforts must incorporate initiatives aimed at improving women's access to justice.[32] Legal empowerment entails methodical changes that enable poor and disadvantaged individuals to

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[25] Golub, *supra* note 17.
[26] Caroline Moser, *Rights Power, and Poverty Reduction*, in POWER, RIGHTS, AND POVERTY: CONCEPTS AND CONNECTIONS, 29-51(Ruth Alsop ed. 2004).
[27] ASIAN DEVELOPMENT BANK, *Legal Empowerment for Women and Disadvantaged Groups* (2009) (hereinafter 'ADB') https://www.adb.org/publications/legal-empowerment-women-and-disadvantaged-groups.
[28] ADB, *supra* note 27.
[29] *Id*.
[30] UNGA, *Legal empowerment of the poor and eradication of poverty,* Report of the Secretary-General A/64/133 (2009) (hereinafter 'UNGA'). https://digitallibrary.un.org/record/673718?ln=en&v=pdf
[31]INTERNATIONAL DEVELOPMENT LAW ORGANIZATION, LEGAL EMPOWERMENT: PRACTITIONERS' PERSPECTIVES (Stephen Golub ed. 2010).
[32] UNGA, *supra* note 28.

stake claim to their rights by accessing legal resources.[33] From a human rights lens, legal empowerment is both a process and an end. Legal empowerment approaches are intended to be pragmatic, responsive to socio-legal needs, and to reach out to those who are most vulnerable.[34]

There is a growing consensus among scholars on four facets of legal empowerment approaches.[35] First is "Rights enhancement" which means a restructuring of laws to provide agency to the weak and marginalized. It aims to provide a conducive environment for disadvantaged sections of society to claim their rights.[36] The second is "Rights Awareness" which entails the provision of knowledge to legally empower someone. Awareness is essential as it is the starting point to develop an understanding of norms and procedures. It is a prerequisite for empowerment. Only when people are aware of their rights and entitlements, they will seek justice in case of violations. Third is "Rights enablement" which focuses on methods in place to seek justice. This includes legal aid, reformation, and development of institutions, making them responsive to the vulnerable section, and other positive actions that bring marginalized people closer to legal institutions. Fourth is "Rights Enforcement" which includes improving access to enforcement mechanisms. Both formal and informal systems (such as ADR and other traditional dispute resolution systems) fall under its ambit.[37] Efforts have been made by multiple scholars and organizations to arrive at a unanimous understanding of legal empowerment initiatives, but no common understanding seems to have developed. For this paper, the author relies on the classification of legal empowerment initiatives as provided by the Asian Development Bank as "basic awareness raising, formal and informal support activities (to benefit individuals), and activities aimed at improving entire communities' relationships with the law and broader structures of administrative governance."[38]

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C. Access to Justice

[33] Commission On Legal Empowerment of Poor, UNDP, *Making the Law Work for Everyone* (2008) http://content-ext.undp.org/aplaws_assets/2099169/2099169.pdf

[34] Vivek Maru, Allies Unknown: Social Accountability and Legal Empowerment, 12(1) HEALTH & HUMAN RIGHTS IN PRACTICE 83-93 (2010).

[35] USAID, *Legal Empowerment of the Poor: From Concepts to Assessment* (2007) https://pdf.usaid.gov/pdf_docs/PNADM500.pdf

[36] Sanna Josefin Benjaminsson, *Legal Empowerment Through Legal Aid: Examining How Legal Aid Promotes Legal Empowerment for Vulnerable Women in Uganda* (2014); https://lup.lub.lu.se/luur/download?func=download File&recordOId =4443035&fileOId=4443036

[37] *Id.*

[38] ADB, *supra* note 27.

Access to justice finds its roots in the Magna Carta and the ancient Roman principle of *Ubi Jus Ibi Remedium*. The concept rose to prominence in human development discourses as a necessary concomitant of several human rights. The Magna Carta, the Universal Declaration of Human Rights 1948, The International Covenant on Civil and Political Rights 1996, and all civilized societies around the world recognize access to justice as an inalienable right. United Nations Development Program defines access to justice as "the ability of people to seek and obtain a remedy through formal or informal institutions of justice, in conformity with human rights standards."[39] Equal access to justice is a prerequisite for the rule of law and contributes to the meaningful development of a nation.[40] Access to justice is also inextricably intertwined with legal empowerment and is recognized as its vital pillar.[41]

In India, access to justice was recognized as a human right even before the Constitution came into being.[42] This right is enshrined in the Indian Constitution under Art.32, 226, and 142. The Indian Supreme Court has on multiple occasions emphasized the significance of access to justice and highlighted that it is a fundamental right implicit under Article 21 of the Constitution of India.[43] The right to free legal aid has been recognized by the Hon'ble Court as a facet of the right to access justice.[44] Sustainable Development Goal 16 aims to promote "peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels." Sustainable development demands that institutions administering justice must be accessible, inclusive, and participatory. The 2030 agenda for Sustainable development goals aims to focus on those sections of society that are usually left far behind. Because of gender discrimination and subsequent marginalization in most societies, women, especially those from economically weaker sections of society are the poorest of the lot when it comes to accessing justice. They are particularly disadvantaged due to the traditional socio-cultural, economic, and

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[39]UN Women, *Fact Sheet on the Importance of Women's Access to Justice and Family Law;* https://www.unssc.org/ sites/default/files/UNWomenFactSheet.pdf

[40] DASRA, *Tipping the Scales: Strengthening Systems for Access to Justice in India* (2018) (hereinafter 'DASRA'); https://clapindia.org/profile/5cc81eb1c0c43.pdf

[41] National Network on Environments and Women's Health, *Women's Poverty, Women's Health: The Role of Access to Justice* (2001)

[42] In Re: Llewelyn Evans vs Unknown, AIR 1926 Bom 551.

[43] Imtiaz Ahmad v State of U.P. & Ors. (2017) 3 SCC 658.

[44] M.H Hoskot v. State of Maharashtra (1978) 3 SCC 544.

psychological barriers, such as gender discrimination, the social stigma of bringing claims, lack of gender sensitivity in legal institutions, etc.[45]

Accessible justice systems enhance women's capability to realize their rights, prevent violations, and have the potential to establish new social norms.[46] There arises a need for judicial systems to become responsive to peculiar challenges that women face in accessing justice and to devise measures that help women to realize their social, economic, political, and cultural rights.[47] To ensure equal and effective justice for women, each component of the justice system needs to be gender responsive and engineered to guarantee not just formal but substantive equality for women.[48]

III. BARRIERS TO FREE LEGAL AID FOR WOMEN IN INDIA

As a necessary concomitant of access to justice, legal aid enables women to realize their rights and live a life of dignity. Legal Services Authorities Act 1987[49] provides the right to free legal aid to all women, regardless of financial status. However, in reality, the below-mentioned factors delimit women's access to legal aid which invariably affects their access to justice. One significant aspect of legal aid is enhancing legal awareness which enables the realization of rights. Justice P.N Bhagwati laid stress on the need to raise legal awareness among the poor specifically about the right to free legal aid as he observed that in India most people are unaware of their rights guaranteed by law[50]. Awareness is key as it builds confidence to claim rights. It is not empowerment per se, but a means to empowerment. So, rights awareness is a starting point for legal empowerment.[51]

However, poor awareness of rights and the means to exercise them is a major challenge that has prevented the legal aid movement in India to realize its established goal. The right to free legal aid was envisaged to serve as a stepping stone for vulnerable women to realize their other significant rights. But, awareness about the same is abysmally low among women. This is

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[45] IDLO, Navigating Complex Pathways to Justice: Community Paralegals and Customary and Informal Justice (2021). https://www.idlo.int/sites/default/files/handout_paralegals_and_cij_for_final.pdf
[46] Dr. Justice B.S Chauhan, *supra* note 5.
[47] UN Women, *supra* note 8.
[48] Frances Raday, *Women's Access to Justice*, OHCHR; https://www.ohchr.org/sites/default/files/ documents/ HRBodies/CEDAW/AccesstoJustice/Ms.FrancesRaday.pf
[49] Legal Service Authorities Act,1987, § 12.
[50] Suk Das v. Union Territory of Arunachal Pradesh AIR 1986 SC 991.
[51] ADB, *supra* note 27.

especially true of women in low-income households. Also, the majority of Indian women especially those from rural backgrounds are illiterate and the average education level of the others is low.[52] A survey of 532 women from low-income households spread across 7 Indian states shows that they are completely unaware of their right to access free legal aid. Most of them had no clue about legal services authorities and nearly all of them were unaware of the procedure to access free legal aid. Some women who were aware of the legal service institutions had heard about them from legal awareness programs. Interestingly, most of them expressed a desire to know about legislation protecting the rights of women, especially in cases of domestic violence.[53]

Patriarchy and gender discrimination have disadvantaged and marginalized Indian women for a long time.[54] At the outset, socio-cultural and economic barriers delimit a woman's capability to exercise her will. These barriers originate from deep-seated gender discriminatory norms that affect all facets of a woman's life, be it cultural, economic, political, educational, or social. Indian Society has a male child preference. The high rates of female foeticide and infanticide in the country bear testimony to this fact. This preference originates from the belief that sons will serve as a support system to parents in old age, whereas daughters will forever be a liability. Even if a female child is born and allowed to live, she is neglected in matters of nutrition, education, health, and career opportunities. Women are unjustly treated right from childhood and denied their basic rights. They are discriminated against at every stage of society, which adversely impacts their social, political, and economic participation.[55]

The economic dependence of women on their male relatives robs them of their mobility. It is pertinent to note here that India ranked 143rd out of 146 countries in the economic participation and opportunity category for women in the Global Gender Gap Report 2022.[56] The female labour force participation rate is a mere 32.8% which severely limits women's financial

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[52] MARG, *supra* note 9, at 40.

[53] MARG, *supra* note 9, at 15. See also: DASRA, *supra* note 40 at 13.

[54] Anju Beniwal, Gender Discrimination and Empowerment of Women in India: A View, 74(1) THE INDIAN J. OF POL.SCIENCE 27-38(2013).

[55] PTI, *India accounts for 45.8 million of world's missing females over last 50 years: UN report,* THE PRINT (Jun. 30, 2020) https://theprint.in/india/india-accounts-for-45-8-million-of-worlds-missing-females-over-last-50-years-un-report/451545/; Aastha Ahuja, *National Girl Child Day: 10 Facts on The Status Of Girl Child And Women In India*, NDTV (Jan. 24, 2022). https://swachhindia.ndtv.com/national-girl-child-day-2022-10-facts-on-the-status-of-girl-child-and-women-in-india-66175/

[56] World Economic Forum, *Global Gender Gap Report* (2022) https://www3.weforum.org/docs/WEF_GGGR_2022.pdf

independence.[57] Even when women are educated and financially independent, they have little or no say in the disposal of their income.[58] This ultimately affects their access to resources including legal resources. In a patriarchal society like ours, socio-cultural norms are designed to control a women's free will in the name of family honour. If women defy these norms, they are accused of maligning the reputation of the family. As a result, most women lack agency and are forced to maintain the status quo even when they are leading a life without dignity. For instance, women may remain confined in an abusive marriage, because of societal pressure.

Matrimonial and other domestic disputes are considered extremely private issues in our society. As per societal norms, they must be dealt with within the precincts of a family home. When a woman resorts to legal measures to claim her rights in domestic disputes, she is looked down upon for dragging the family's name to the courts. Also, in cases of sexual violence against a woman, our society maligns the victim's character and brings disrepute to her family. A victim's character is scrutinized with suspicion of being impure and loose. If she is unmarried, the fact that she has been sexually violated in the past greatly reduces her chances of finding a suitable groom. All this punishes the victim in place of the perpetrator and prevents her from initiating legal action against the accused. Therefore, the social stigma attached to approaching the legal machinery for help induces fear in women and dissuades them from doing so[59].

Gender insensitivity permeates all levels of society and leaves no institution untouched. The justice system is no exception. It is manned by people who are part of a patriarchal and hierarchal society and they reflect and voice its sensibilities. This aggravates a woman's vulnerability and hinders her access to justice. While, efforts have been made in the past, to alter sensibilities and make legal institutions more accessible to women, not a lot seems to have changed on the ground. Gender-sensitive laws and procedures have been adopted by the State, but their strict and fair implementation remains the core issue.[60] To give an example, let us consider the challenges that a woman encounters while registering an FIR.

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[57] Taran Deol, *Women and Men in India: Sex Ratio Improves but female participation in the workforce still low*, DOWN TO EARTH (Mar. 17, 2023); https://www.downtoearth.org.in/news/health/women-and-men-in-india-2022-sex-ratio-improves-but-female-participation-in-workforce-still-low-88300
[58] B.R Siwal, *Empowerment of Women and Gender Issues*, (NIPCCD, 2009).
[59] Sylvia Vatuk, *The Women's Court in India: An Alternative Dispute Resolution Body for Women in Distress*, 45 J. LEGAL Pluralism & UNOFFICIAL L. 76 (2013) (hereinafter, 'Sylvia Vatuk').
[60] *Id.*

Filing an FIR sets criminal law in motion. It is the first step taken to initiate criminal proceedings against the accused. Mostly, women approach the police station with a complaint of domestic violence, cruelty by husband and relatives, molestation, rape, and assault with intent to outrage modesty.[61] It is pertinent to mention here that in doing so, the victim has already crossed one barrier of social stigma as discussed above. Once she is at the police station, usually little or no weight is given to her statements. The approach of most police officers is callous and insensitive to the plight of the victim.[62] This happens despite the gender sensitization training undertaken by police officials.[63] In case a woman has an able lawyer or paralegal to assist her, her complaint will be registered. Otherwise, in most cases, all she receives is advice to settle matters privately. Also, women in such situations are not even informed by police officers of their right to seek free legal aid.[64] If a woman is served with this attitude at the entry point of the criminal justice system, there are bleak chances of her resorting to legal help in the future.[65]

Based on the above-mentioned factors, one can argue that the barriers that women face in their access to justice are inextricably linked to their socio-economic status in society. It is vital to initiate targeted ground-level action that aims to empower women at the grassroots thereby enabling them to claim and exercise their rights. Female community paralegals can be a particularly useful resource in this regard. Part IV of this paper throws light on their role in improving women's access to free legal aid.

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[61] *Crimes against women rose 15.3% in 2021, Delhi most unsafe: Key takeaways of NCRB report*, FIRSTPOST (AUG.30,2022) https://www.firstpost.com/explainers/explained-crimes-against-women-rose-15-3-in-2021-delhi-most-unsafe-key-takeaways-of-ncrb-report-11144691.html
Also, *Cruelty by Husband' Top Crime Against Women: How India Ignored Shadow Pandemic,* QUINT (OCT.13 2022) https://www.thequint.com/news/india/cruelty-by-husband-top-crime-against-women-2021-ncrb-data#read-more

[62] *Emerging Challenges on Women and Law in India: Challenges for Women in Criminal Law,* THE LEAFLET (MAR.21,2022). https://theleaflet.in/emerging-challenges-on-women-and-law-in-india-ii-challenges-for-women-in-criminal-law/ (hereinafter 'emerging challenges'). see also: CHRI & AALI, *Barriers to Justice: Rape Survivors in State of Uttar Pradesh: The Experiences of 14 Rape Survivors in Uttar Pradesh, India* (2020). https://www.humanrightsinitiative.org/download/CHRI%20and%20AALI%20Barriers%20in%20accessing%20justice%20English.pdf

[63] PIB, *NCW signs MOU with BPR&D for Nation-Wide Gender Sensitization Training Programme for Police Personnel* (Jul.16, 2021, 5:08 P.M) https://pib.gov.in/PressReleseDetail.aspx?PRID=1736188; Sreenivas Janyala, *Telangana: Training to Increase Gender Sensitivity Among Police*, THE INDIAN EXPRESS (Mar. 1, 2017) https://indianexpress.com/article/cities/hyderabad/telangana-training-to-increase-gender-sensitivity-among-police-4548905/

[64] Bhartiya Stree Shakti, *Tackling Violence against Women: A Study of State Intervention Measures* (2017). https://wcd.nic.in/sites/default/files/Final%20Draft%20report%20BSS_1.pdf

[65] S*upra* note 62.

IV. ROLE OF PARALEGAL VOLUNTEERS IN THE LEGAL AID SYSTEM

There are two broad categories of paralegal volunteers functioning in India. The first category is of paralegal volunteers selected by Legal Service Authorities (hereinafter LSA) who are also known as LSA Paralegals. Second is paralegal volunteers trained by and working for organizations engaged in improving access to justice for the weak and marginalized sections of society. They are better known as community paralegals in several developing countries around the world.[66] Part IV of this paper discusses them in detail.

A. LSA Paralegal Volunteers: Role and Responsibility

In India, a paralegal volunteer scheme by National Legal Services Authority (hereinafter, NALSA) has been in place since the year 2009. The scheme aims to bring legal aid to the doorstep of beneficiaries by bridging the gap between the poor, weak, marginalized, and legal services institutions thereby improving their access to justice. It envisions paralegal volunteers as intermediaries who reach out to far-fetched and underserved sections of society to facilitate their access to justice. Paralegal volunteers are to be trained in basic laws and welfare measures so that they raise legal awareness in their immediate neighbourhood and provide necessary legal assistance to community members.[67] As per the scheme, a paralegal is required to be a literate person with basic comprehension abilities. However, preference is given to candidates with matriculation. Paralegal volunteers can be selected from a pool of teachers (including retired teachers), retired government servants, senior citizens, Anganwadi workers, NGO workers, students, doctors, members of self-help groups, etc.[68]

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In a vast and diverse country like India, a workforce of paralegal volunteers plays a significant role in reaching intended beneficiaries in far-off locations and linking them to legal services institutions. They are not lawyers providing legal advice, but volunteers engaged in awareness-building programs and assisting people to receive free legal aid when in need. They are required to have basic knowledge of rights and entitlements, services provided by legal services institutions, and the basic functioning of the justice system.[69] Raising legal awareness is not

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[66] DASRA, *supra* note 40.
[67] NALSA, *Scheme for Para-Legal Volunteers* (2009) (hereinafter, 'NALSA'); https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes/scheme-for-para-legal-volunteers
[68] *Id.* At 3.
[69] NALSA, *supra* note 67 at 2.

the sole mandate provided to paralegals, but they are also required to settle simple issues at origin through counselling of parties. In case the dispute is of a nature that cannot be settled at source, paralegals are required to assist the parties in accessing mediation centers, ADR centers, Lok Adalat, or Court as per the case requirements.[70]

The NALSA Vision document of 2009, states that paralegal volunteers are required to educate common people about their constitutionally and legally guaranteed rights as well as their duties and obligations as per the law of the land. These volunteers are required to assess the nature of the conflict between parties and assist them in taking help from suitable legal services institutions. Acts of violence and injustice in their area must be immediately brought to the notice of the concerned Taluka Legal Services committee by the para-legal volunteer so that effective action can be taken by the committee.[71] Paralegal volunteers are required to provide necessary assistance, to concerned legal aid authorities for organizing legal awareness camps in their designated area of work. They are required to be instrumental in facilitating physical access of beneficiaries to legal services authorities by providing their addresses and raising awareness of the free legal services provided by such authorities. They shall also enlighten people on the benefits of dispute settlement at the pre-litigation stage by spreading awareness on the functioning of Lok Adalat's, Arbitration, mediation, and conciliation methods.[72]

B. Distribution and Diversity of LSA Paralegal Volunteers

As paralegals are the first contact point between the general public and legal services authorities, they play a key role in improving access to justice for the weaker sections of society. Given their instrumental role in the legal aid system, the selection of appropriate paralegals is significant. Diversity in the paralegal force will expand outreach and enhance access. As per NALSA Paralegal Volunteer Scheme, the committee for the selection of Paralegals is mandated to prefer women paralegal volunteers (hereinafter, PLVs) and ensure adequate representation from SC/ST, minority, and other backward classes.[73] However, the India Justice Report 2022, reveals the scattered distribution of PLVs across the country[74]. The said report observed that as per the NALSA mandate, every DLSA should have 50 active PLVs,

[70] *Id.*
[71] NALSA, *supra* note 67 at 7.
[72] *Id.*
[73] NALSA, *supra* note 67 at 4.
[74] India Justice Report, *supra* note 6.

however in the past 2 years, 26 out of 36 states in the country have lowered the number of PLVs. There is a 15% drop in the national average. Also, there is no uniform established criteria for the number of PLVs to be appointed in a particular area. Consequently, some States and UTs appoint more PLVs than required, whereas some appoint less than the required number.

Unfortunately, there is no data available on the caste and religious diversity of paralegals in the country. However, relevant figures are available to assess diversity based on gender. Between years 2020 and 2022, the share of female paralegals increased from 35 to 40 % nationally. But, the distribution of female paralegals is highly uneven and their numbers are dismal in most states. Some big states like Uttar Pradesh and Bihar have 25 and 27 % of female paralegals respectively.[75] This is worrying as these states have a substantial share of poor people in the country and report high rates of crime against women.[76] Also concerning is the fact that there is no empirical evidence available to suggest reasons for the low numbers of female paralegals in the country. Research shows that State Human Rights Commissions, as well as State Women Commissions, receive a high incidence of complaints of violence against women. In most of these cases, there is little or no help from legal service institutions.[77] As per a child rights activist in Agra, "Women victims hesitate to narrate their ordeal to male paralegals." At police stations, male police officers ask female victims discomforting questions that can dissuade them from reporting offences.[78] Further, in several cases of crimes against women where the perpetrator is close kin of the victim, lack of suitable paralegal help for the victim leads to the crime being unreported. Victims of crimes such as sexual harassment hesitate in sharing their plight with a male paralegal. This situation is worse when the victim is a minor and her parents do not intend on taking the legal route due to fear of losing their reputation.[79] There is no denying the fact that a low percentage of female paralegals is a potential challenge for women in accessing legal aid services. Considering the significant role and responsibilities of LSA Paralegal volunteers as discussed above, there is a strong case in

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[75] *Id.*

[76] Amogh Rohmetra, *Maximum cases of crimes against women in UP, most rape cases in Rajasthan in 2021, says NCRB*, THE PRINT (Aug. 30, 2022). https://theprint.in/india/maximum-cases-of-crimes-against-women-in-up-most-rape-cases-in-rajasthan-in-2021-says-ncrb/1107482/

[77] MARG, *supra* note 9, 36-39.

[78] Manish Chandra Mishra, *India's Legal Aid System Needs More Female Paralegals, Monitoring,* INDIA SPEND (Feb.11, 2020) https://www.indiaspend.com/indias-legal-aid-system-needs-more-female-paralegals-monitoring/

[79] *Id.*

favor of increasing female paralegal volunteers to reach out to more women beneficiaries under the free legal aid scheme.

V. FEMALE COMMUNITY PARALEGALS: WHY INDIA NEEDS THEM?

Around the world, several initiatives are being taken to impart fundamental legal knowledge to some women in the local community and prepare them as community paralegals. The rationale is that women from the same community can better understand and appreciate the socio-cultural fabric of a community and the barriers that restrict community women to access legal help. These programs are a promising mechanism for legal empowerment and improving access to justice. Community Paralegals are volunteers who are formally trained to raise legal awareness and impart basic legal education to their community. They are usually unpaid or paid a small amount depending on their work. They may be associated with a charitable organization receiving donations, a non-government organization receiving government aid, or an organization of a government nature. These organizations usually compensate them for expenses incurred on transport and other related costs.[80] Community Paralegals are an effective tool when it comes to empowering the marginalized sections of society to claim equality and live with dignity. They are a crucial resource embedded within the community for raising awareness and facilitating access to formal legal systems. They are increasingly being seen as a force to reckon with, especially in hierarchical and patriarchal societies where women have historically been discriminated against.

For women, accessibility, both physical and financial is a major cause affecting their use of legal services. In most cases, women lack the financial resource to travel to far-off places and seek legal aid. As community paralegals are embedded in the local population they serve, they are more visible and accessible. Community paralegals are not just physically accessible but their knowledge of the local population makes them more approachable. In the words of Prof. Chris Maina Peter,[81] community paralegals play a significant role as "they talk the talk and walk the walk of a community." They also have the added advantage of being context-specific

[80]Carley Robb-Jackson, *Justice Watchdogs: Promoting Women's Access to Justice Through Community-Based Paralegal Programs* (CISDL, Legal Working Paper Series on Legal Empowerment for Sustainable Development) (2012) (hereinafter, 'Carley Robb-Jackson'). https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/49946/ IDL-49946.pdf?sequence=1&isAllowed=y

[81] Chris Maina Peter, *Access to justice - Creating a role for paralegals in the administration of justice in Africa* 1 RECHT IN AFRIKA 128 (2008).

and not imposing a uniform pattern of legal aid assistance designed from an outsider's perspective that might not incorporate the concerns of all sections of society.[82]

A refreshing example of female community paralegals from India is the *Jankar* program in Maharashtra.[83] The program began in the year 2000 as a response to increasing instances of abuse and violence against women in lower-income households. Under the program, selected women from the local community are provided with basic legal knowledge of women's rights and are called '*Jankar'*, meaning the one who is informed. The idea is to enable them to raise awareness about women's rights in the community. They are trained to counsel parties and if possible, amicably resolve family disputes at the source itself. Interestingly, awareness about the program in the community was created by several self-help group members as well as police personnel. When a complainant approaches *the Jankars* for help, they are made to fill up a form with details of both the parties involved and the nature of the issue. Both parties are then called for discussion separately and also jointly. Due counselling is provided to parties and efforts are made to reach a settlement. However, if parties do not arrive at a settlement, the matter is then taken to the Court.

In several years of their successful operation, the *Jankars* have also acted as a ground force for state officials by raising awareness and facilitating effective implementation of laws enacted for the welfare of women in distress, such as the Domestic Violence Act, 2005, the Criminal Amendment Act (2013), etc. *Jankars* enlighten women on their rights and keep them abreast with relevant laws enacted and updated by the State for their protection. A *Jankar* decodes the legal jargon for community women and explains them in their simple day-to-day language. Women attending these legal awareness programs conducted by *Jankars* share this information with other women in the community and as a result, information about the relevant gender laws travels far by word of mouth. The ever-increasing number of cases received by *Jankars* over the years bears testimony to the effectiveness of such programs. There is no denying the fact that many women face different kinds of abuse in a patriarchal family setting. But, awareness of such abuse being a violation of their fundamental rights is abysmally low. This is especially true in terms of women from rural backgrounds and low-income households in urban areas. Apart from low awareness, socio-cultural and economic factors also limit women's access to

[82] Carley-Robb Jackson, *supra* note 80.

[83] Vaishnavi Pawar, *Women Paralegals Help Settle Disputes at Community Level*, VILLAGE SQUARE (Mar. 25, 2020) https://www.villagesquare.in/women-paralegals-help-settle-disputes-at-community-level/

law enforcement mechanisms. This is the gap that community paralegals such as the *Jankars* fill in.

Another example of a successful community paralegal model is the *Narmada Mahila Sangh* (hereinafter, NMS) from Betul district in Madhya Pradesh. NMS is a federation of around 15000 marginalized women's collectives working for the overall development of villages since the year 2009. The NMS Paralegal program started in the year 2012 in response to rising cases of domestic violence and various other atrocities committed against women in the region. It supports poor victims of gender-based violence in accessing justice. A case is registered with NMS on a written application by the victim or by any representative of the victim. The case is then judged on viability and if deemed fit, it is assigned to a paralegal. The paralegal begins by counselling the victim and providing necessary information on the available legal route. A village-level meeting then takes place to mobilize support in favour of the victim. Often this meeting acts as a platform for dispute resolution, however, that entirely depends on the choice of the victim. The victim is then assisted by a paralegal to approach a police station and file an FIR. NMS supports a victim with all necessary assistance till her case is registered in court or till the trial begins. In some special circumstances, a victim is supported till she gets justice. Apart from assisting victims in accessing justice, NMS paralegals are also engaged in awareness-building exercises that aim at sensitizing the community about gender discrimination, gender violence, women's rights, legal safeguards provided to them by the State, etc.

NMS Paralegal Program has so far been efficient in bridging the gap between victims of violence and state legal services. It realizes that only when there is active participation at the community level, state legal measures and policies will be effective.[84] More evidence in support of the effectiveness of female community paralegals in improving women's access to justice stems from studies of scholars[85] examining the working of all-women dispute resolution bodies operating across the country. The said scholarly studies focus on "all women courts" for their unique structural composition and examine their role in alleviating concerns of women. An 'all women court,' is a dispute resolution forum in which all mediators are women

[84] Clara Mallik, *The Narmada Mahila Sangh Paralegal System: In quest of a sustainable model to address gender violence,* SAMPARK.NET (Feb. 23, 2021) https://www.pradan.net/sampark/the-narmada-mahila-sangh-paralegal-system-in-quest-of-a-sustainable-model-to-address-gender-violence/

[85] Sylvia Vatuk, *supra* note 59.

primarily drawn from the same locality as the clients and belonging to the same socio-economic class.

These dispute settlement mechanisms are primarily set up to deal with marital and other family issues of women as they are one of the most prevalent issues. Their end goal is to preserve the marriage rather than resort to litigation. For this, mediation and counselling sessions are held with the woman, husband, and other relatives. Some of these organizations are of a government nature, some receive aid from the state while some others are run by voluntary organizations working for women's welfare. Organisations running such "all women courts" reason that an abused woman needs a congenial atmosphere to share her ordeal with someone who appreciates and sympathizes with her concerns, is familiar with her culture and will suggest her a solution that aligns with ground reality. It has been observed that even women who run these non-governmental organizations do not themselves preside over the dispute resolution bodies, but hire women from the same community as their client base and train them to act as mediators. Such a mechanism is seen to bridge the class divide between the mediator and the client and provide a conducive atmosphere for free communication. It enables an illiterate or least educated woman to speak without any hesitation and embarrassment. She will also be confident that her issues will be understood in the right context. Moreover, such a mechanism also helps in devising solutions in touch with the realities of the client.[86] Such dispute resolution forums often arrive at an agreement between parties and if all goes well, the issue is resolved at the source, thereby reducing the burden on Courts. However, if the disputing parties do not agree or one of them or both do not abide by the agreement, the complainant is then assisted in approaching the police or a civil court depending on the nature of the complaint.

Social stigma and a fear of loss of reputation often prevent women from taking disputes to the legal system. This is especially true in the case of matrimonial disputes. As observed earlier, in this paper, such disputes are thought to be dealt with in private, and resorting to legal ways is considered as dragging a family to court[87] Community women have either gone through matrimonial issues themselves or have observed them from close quarters.[88] They share the same or similar value system as that of the complainant and can arrive at a pragmatic solution.

[86] *Id.*

[87] Eva Diehl, Can Paralegals Enhance Access to Justice? The Example of Morogoro Paralegal Centre in Tanzania 42(2) LAW & POL. IN AFRICA, ASIA, AND LAT. AMERICA 187-211(2009).

[88] Dina Afrianty, Agents for Change: Local Women's Organizations and Domestic Violence in Indonesia, 174(1) BIJDRAGEN TOT DE TAAL-LAND- EN VOLKENKUNDE, 24-46 (2018).

Women from a similar background as the complainant can understand and empathize with her grievance better than other women despite being educated and having formal training.[89] Educated upper-class or middle-class paralegal volunteers however well-meaning and well-trained, will not be able to cut through class, gender, linguistic, and other socio-cultural and psychological barriers. This is the reason why even women-led NGOs working for gender justice, recruit and train women from local communities and turn them into mediators. Several feminist activists think that class and gender differences between paralegals and complainants hamper free and open communication. Paralegals from a different gender and class will not inspire the same level of confidence and trust, as somebody from the same gender and community will. It is also likely that educated middle-class values will be thrust upon poor illiterate women who form the majority of victims. This is precisely why feminist activists advocate for all-woman dispute resolution forums. The rationale is to expand outreach and initiate free communication.[90]

VI. SUGGESTION AND CONCLUSION

Women's access to free legal aid is a necessary determinant of their access to justice. Patriarchy, discriminatory socio-cultural norms, fear of social stigma, poor awareness, and a gender-insensitive justice system prevent women from realizing their rights. State measures such as introducing social welfare legislation and initiatives to revamp legal institutions to become gender sensitive have had little effect on the ground and justice remains elusive for many women. This is especially true for women from low-income households as they face a double whammy of both gender and class discrimination. It is an absolute necessity to adopt legal empowerment initiatives that entail a bottom-up approach because clearly, the top-down policies have failed to serve the purpose. In this endeavour to legally empower women at the grass-root level, female community paralegal volunteers can play a significant role.

Various organizations functioning across the country for gender justice have set up forums where women from the same community as the target population act as mediators. Most of these organizations aim to achieve gender equality in society by challenging patriarchal norms that perpetuate discrimination against women and delimit their access to justice.[91] They impart

[89] *Id.*
[90] Sylvia Vatuk, *supra* note 59.
[91] *Id.*

basic knowledge on women's rights to selected women in a community and train them to act as paralegals. The rationale behind this is that these women will understand the plight of a distressed victim in a specific socio-cultural context and provide them with solutions in touch with ground reality. NALSA Paralegal Volunteer scheme directs the paralegal selection committee to prefer women paralegal volunteers and ensure adequate representation from SC/ST, minorities, and other backward classes. However, the number of women paralegals in most states is dismal and their distribution is uneven. This is a potential challenge as it impacts outreach to a community that faces traditional socio-cultural barriers in accessing legal aid.

Therefore, there is a strong case in favour of increasing the number of female paralegals in the country, to make them more visible and accessible to women in distress. In doing so, the focus must be on the socio-cultural and economic embeddedness of paralegals in their target community. Also, multiple organizations working across the length and breadth of the country train community women to act as paralegals and promote the legal empowerment of women in their community. Legal service institutions can absorb this pool of women to act as legal aid volunteers after necessary checks to ensure their suitability as legal aid volunteers.[92] Further, empirical investigation on the local population must be undertaken to assess the appropriate number, caste, and religious diversity of female paralegals required. There is no denying the fact that empowering women through female paralegals is only one aspect of facilitating woman's access to legal aid. But it is a key aspect as paralegals play a crucial role in empowering women to claim their rights. With their work at the grassroots, female community paralegals are likely to be the most effective agents for the legal empowerment of women.

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[92] DASRA, *supra* note 40.