

A NECESSITY THAT IS LEFT AS A LUXURY: LEGAL AID FOR CRIMINAL DEFENCE IN SRI LANKA

*Nishandeny Ratnam**

ABSTRACT

With the international legal framework and Sri Lankan legal and institutional framework on legal aid, the paper analyses the status of legal aid for the criminal defence in Sri Lanka. Using a qualitative research design, the comparative perspectives and lessons from other jurisdictions are highlighted to note that the formalized legal aid scheme (staff lawyer model) largely focuses on civil legal aid for the low income and vulnerable groups of Sri Lankan society. The assigned counsel system (judicare model) which is a court facilitated legal assistance when suspects are unrepresented is available on a very limited level. Connected issues in the legal education, legal professional commitment, and service delivery concerns of other institutions in the justice sector are highlighted to argue that the overall system suffers from many drawbacks and ultimately the ‘right to counsel in criminal defence’ is not ensured for the indigent suspects in Sri Lanka.

1. THEORETICAL FRAMEWORK ON LEGAL AID

1.1 Access to Justice and Legal Aid

It is a common phenomenon that legal costs are very high. Yet, access to justice cannot be conditioned upon the financial ability to hire a lawyer. An organized society should have a responsibility towards the poor and other marginalized groups and legal aid is one of the mechanisms that make the poor feel supported and part of the society. This is probably why sometimes legal aid is perceived as a mechanism of social control and to curb revolutionary tendencies.¹

The traditional colonial Anglo-Saxon adversarial system of the administration of justice focuses on individual autonomy and allows the

* LL. B(Hons)(Colombo), LL.M (ONU); MHRD(Asia-Pacific); Attorney-at-Law.

¹ Prud’homme, Jules, ‘Legal Aid Societies’ (1924) 2 *Canadian Bar Rev.* 181.