

Contemporary Issues in Criminal Justice

Deepti Malik

L.L.B (Hons.) G.D Goenka University ,Gurgaon, Haryana

1. Introduction

Reconciling the need of providing effective and practical right to legal advice to suspects from the initial stage of investigation is impossible in UK. This is due to the introduction of cost-cutting approach by the UK government on delivering legal services. In the year 2013, the LASPO Act 2012 was enforced. LASPO stands for the act of Legal Assistance, Sentencing and Punishment.¹ The enforcement of this act changed the system of legal for family members and additional aspects of civil law in Wales and England. Before this date, there was availability of legal aid for assisting people with the accessibility of justice in every area of civil law, with specific exceptions prescribed and narrowed down. There has been a complete reversal of this situation.² There is only availability of legal aid in civil case for specifically prescribed types and topics of legal performance. This is subjected to overriding additional funds in other types of cases.

The enforcement of LASPO is an effort of the UK government for achieving cuts in legal aid. A year prior to the enforcement of LASPO, there were 952,000 cases that were granted with legal aid. As a result of the act enforced, 497,000 cases were provided with legal aid, which is a decrease by 46 per cent.³ Even though there have been clear reduction in costs, several organizations and parliamentary committees were concerned about the bigger financial costs to other significant services and local authorities. Civil legal aid is a crucial cornerstone for accessing justice, and this has been disrupted by the cost cutting approach. This will be discussed and rationalized further ahead in this essay. Overview of the LASPO Act

The LASPO Act determines specific legal areas that will not be provided with adequate funding for legal aid. These areas are as follows:⁴

- Welfare benefits (apart from appeals at legal point in the Upper onward and tribunal appeals to the Supreme Court and the Court of Appeals)
- Private family law (apart from cases in which there is a strict criteria related to child abuse or domestic violence)
- Immigration (there are exemptions for cases that include detention and asylum)

- Housing concerns (apart from the ones in which the home can face risk, housing disrepair or homeless assistance posing a severe risk to health or life and anti-social behaviour)
- Employment cases
- Education (apart from cases related to special needs in education)
- Debt (apart from cases including immediate risk to home)

Despite the austerity agenda of coalition government, there is abundant clarity in the fact that equality against law is not a statutory principle any more for the society. The possible impact of welfare reform on social cohesion is quite profound.⁵ However, LASPO is not just about abolishing the right to legal aid and assistance for the ones who cannot afford to purchase justice. It also signifies the end of several career opportunities who work for a fee to provide legal assistance and aid.

2. Benefits of Early Access to Legal Aid

Accessibility of legal aid, specifically during the initial stages across the process of criminal justice, is a centralized element to ensure the accessibility of justice for disadvantaged and poor groups who have less accessibility of information and less awareness about the entitlements and the rights.⁶ The power imbalance between suspects and state authorities is considerably significant in all cases. However, this gap becomes more prominent when members of marginalized and poor groups are detained and arrested as they lack awareness about their right or lack sufficient resources for the retention of legal representation and advice. One major benefit for the early accessibility of legal aid lies in ensuring that there is equal protection of everyone under law.⁷ In addition, it helps to ensure that individuals are not languished by pre-trial detention. This in turn can allow significant reduction in the costs to communities, families and people.

The United Nations (UN) Guidelines and Principles identify that accessibility of legal assistance, apart from being right, has instrumental advantages for accused people and suspects, the wider community, and the system of criminal justice.⁸ Two key principles in this context are as follows:

⁵ Kirwan SA. *The end of 'tea and sympathy'? The changing role of voluntary advice services in enabling 'access to justice'*. Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need. 2017 Jan 26:179.

⁶ Kaganas F. Justifying the LASPO Act: authenticity, necessity, suitability, responsibility and autonomy. *Journal of social welfare and family law*. 2017 Apr 3;39(2):168.

⁷ Hunter R, BARLOW A, Smithson J, Ewing J. *Access to what? LASPO and mediation. Access to justice & legal aid: comparative perspective on unmet legal need*. Oxford: Hart Publishing. 2017 Jan 26:239.

⁸ Hunter R, BARLOW A, Smithson J, Ewing J. *Access to what? LASPO and mediation. Access to justice & legal aid: comparative perspective on unmet legal need*. Oxford: Hart Publishing. 2017 Jan 26:241.

¹ Lacey N. *Justice redefined—or justice diluted?* Family Law. 2014;2014(44):593.

² Kirwan SA. *The end of 'tea and sympathy'? The changing role of voluntary advice services in enabling 'access to justice'*. Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need. 2017 Jan 26:179.

³ Brooke H, Etherton T. *The LASPO Review: My Recent Talk about the Bach Commission's Report on the Right to Justice*. Birkbeck L. Rev..2018;6:1.

⁴ Lacey N. *Justice redefined—or justice diluted?* Family Law. 2014;2014(44):594.

1. A functional system of legal aid, involved in the functioning system of criminal justice, will be reducing the time till which suspects have to stay at detention centres and police stations. In addition, it will allow the reduction of prison population, prison congestion and overcrowding, and wrongful convictions in courts.⁹ While allowing the reduction of re-victimization and re-offence, it will be safeguarding and protecting the rights of witnesses and victims in the process of criminal justice. There can be use of legal aid for contributing to prevent a crime with enhanced awareness under law.
2. Legal aid has a significant role to facilitate diversion and utilize measures and sanctions on the basis of community.¹⁰ These measures are: non-custody measures, promotion of enhanced community involvement throughout the system of criminal justice, reduction in unnecessary utilization of imprisonment and detention, rationalized policies of criminal justice, and efficient utilization of state resources.

From this perspective, it can be stated that accused people or suspects who are detained or arrested by legal agencies or police can enjoy significant benefits regarding the initial accessibility of legal aid in several ways.

Actively involving providers of legal aid during the initial stages across criminal justice can assure the protection of suspects against torture, ill-treatment and intimidation. It was stated by the Special Rapporteur on the independent status of lawyers and judges that a lawyer present in interrogation is a major safeguard from any kind of ill-treatment.¹¹ It has further been stated regarding the concern of torture that no confession given by an individual from deprived liberty should be presented with a probative amount in court.

Further ahead, during the universal process of periodic review, states provide regular recommendations for guaranteeing the accessibility of legal aid. It is crucial for taking all necessary efforts such that torture, arbitrary arrest and detention, and excessive utilization of force is prevented.¹²

Reconciling the need of providing effective and practical right to legal advice to suspects from the initial stage of investigation is impossible in UK. This is due to the introduction of cost-cutting approach by the UK government on delivering legal services. In the year 2013, the LASPO Act 2012 was enforced. LASPO stands for the act of Legal Assistance, Sentencing and Punishment. The enforcement of this act changed the system of legal for family members and additional aspects of civil law in Wales and England.¹³ Before this date, there was availability of legal aid for assisting people with the

accessibility of justice in every area of civil law, with specific exceptions prescribed and narrowed down.

3. Legal Aid: An Effective Human Right

Legal aid is a crucial element of an efficient and fair justice system that was found under legal rule. It can also be defined as a right under this perspective and a significant precondition for exercising and enjoying several human rights. These include the right to effective remedy and fair trial.¹⁴ Accessibility of legal assistance and advice is a significant safeguard for ensuring public trust and fairness while administering for justice. For claiming and enforcing rights, people should have effective and equal accessibility of justice. In the absence of ability for effective challenging, informing or requesting decisions, it is possible to secure right.¹⁵

All across UK, providing legal is an important aspect of how the state ensures that civil justice system is accessed while meeting binding global lawful obligations for ensuring equality before the tribunals and courts for all. Introducing considerable cuts in the system through LASPO undermines the protection of human right in two different ways: by limiting the accessibility of justice and by imposing a discriminatory on socio-economic bases.¹⁶

Limiting the Accessibility of Justice

Accessibility of justice is a major component of individual right to legal equality, fair trial, and effective remedy. It is a crucial prerequisite for protecting and promoting all human rights. It further ensures that victims of violated rights can help in securing adequate remedies.¹⁷ In this context, every state holds the obligation of ensuring remedies which reflect effectiveness, timelines, affordability, and accessibility. Governments are actually recommended to eliminate obstacles for the accessibility of justice along with the ones which involve disproportionate exclusion of people who live in discrimination and poverty.¹⁸ Nevertheless, the introduction of LASPO by the UK government has followed a completely opposite approach.

This decision for making cuts in the governance of civil legal system was primarily driven through economic aspects with limited evidence on adequate regard for potential profound and negative impacts on protecting human rights across UK. There is no denial in the fact that only some people have accessibility of free legal representation and assistance in a number of different cases.¹⁹ In terms of human rights, the cuts indicate a retrogressive measure which ended up restricting

⁹Kaganas F. Justifying the LASPO Act: authenticity, necessity, suitability, responsibility and autonomy. *Journal of social welfare and family law*. 2017 Apr 3;39(2):169.

¹⁰Hitchings E, Miles J. Mediation, financial remedies, information provision and legal advice: the post-LASPO conundrum. *Journal of Social Welfare and Family Law*. 2016 Apr 2;38(2):175.

¹¹Hitchings E, Miles J. Mediation, financial remedies, information provision and legal advice: the post-LASPO conundrum. *Journal of Social Welfare and Family Law*. 2016 Apr 2;38(2):177.

¹²Genn H. *When Law is Good for Your Health: Mitigating the social determinants of health through access to justice*. *Current Legal Problems*. 2019 Dec 1;72(1):159.

¹³Genn H. *When Law is Good for Your Health: Mitigating the social determinants of health through access to justice*. *Current Legal Problems*. 2019 Dec 1;72(1):162.

¹⁴Flynn A, Freiberg A, McCulloch J, Naylor B, Hodgson J. *Access to justice: A comparative analysis of cuts to legal aid*. Monash University Faculty of Law Legal Studies Research Paper. 2014 Jul 21(2014/06).

¹⁵Craven R, Arrowsmith S. *Public procurement and access to justice: a legal and empirical study of the UK system*. *Public Procurement Law Review*. 2016 Sep 18;6:227.

¹⁶Craven R, Arrowsmith S. *Public procurement and access to justice: a legal and empirical study of the UK system*. *Public Procurement Law Review*. 2016 Sep 18;6:232.

¹⁷Flynn A, Freiberg A, McCulloch J, Naylor B, Hodgson J. *Access to justice: A comparative analysis of cuts to legal aid*. Monash University Faculty of Law Legal Studies Research Paper. 2014 Jul 21(2014/06).

¹⁸Cape, Ed. "Early access to legal aid in criminal justice processes: A handbook for policymakers and practitioners." *UNDP: Criminal Justice Handbook Series* (2014).

¹⁹Brooke H, Etherton T. *The LASPO Review: My Recent Talk about the Bach Commission's Report on the Right to Justice*. *Birkbeck L. Rev.* 2018;6:1.

accessibility of justice for some vulnerably and marginalized people across the society.

The cuts made in legal assistance under LASPO by the UK government fail in meeting the test. As a matter of fact, it was clarified by the UN Committee on Cultural, Social and Economic Rights that it was severely related to the adverse and disproportionate impact of these measures on marginalized and disadvantaged groups and individuals.²⁰ This also reflects the failure of state government for comprehensively assessing the cumulative effect of these measures. It does not help in mitigating inequalities growing across the crisis while ensuring that the disadvantaged rights and marginalised groups and individuals will not be affected in disproportionate terms. The policy should be identifying minimum content of core right or the floor of social protection while ensuring the core protection of content.

Eliminating Affordability of Justice

The enforcement of LASPO depicts how unaffordable justice has become imposing a discriminatory impact on the poor population.²¹ The provision of competent and free legal assistance and advice to the ones who cannot afford the fundamental prerequisite is to ensure that they have equal and fair accessibility to adjudicatory and judicial mechanisms. There is no denial in the fact that poor population groups face maximum barriers in the accessibility of justice.²²

Poverty is a huge factor contributing to the violations of human rights while acting as a significant obstacle in structure for individuals who seek remedies for the violations they face. Certain obstacles are direct outcome for the absence of financial resources, but additional obstacles can be highly discriminatory, structural, institutional or social by nature.²³ People who live in poverty have less awareness about the contents and existence of legal entitlements and rights, while security the required assistance.

Considering the complex and developed legal system across UK, legal aid is a crucial mechanism which helps the members of the society for easily accessing justice. Removing certain legal areas out of the necessary scope of legal assistance has a significant impact on the ones who live in poverty even if they cannot afford for legal representation and advice. There is further exacerbation of the situation because poor people have to deal with several legal issues in certain claims that are eliminated out of the scope of free legal assistance like immigration, debt and welfare benefits. Specifically in civil cases, the absence of legal assistance can end up prejudicing the interests and rights of people who live in poverty.²⁴ The lawful processes in context with these civil issues are high complicated and there are onerous

requirements to create insurmountable challenges when there is no legal assistance involved.

Loss of Legal Assistance in Initial Intervention of Suspects

The enforcement of LASPO has resulted in significant losses among suspects to attain legal advice during initial interrogation and they are only provided with legal assistance during the later point of the interrogation.²⁵ Legal advice during initial interrogation provides the scope of forestalling an escalated series of issues. With the absence of initial legal assistance, a case can become extremely problematic becoming more expensive till it reaches the stage of rectification. Rather than supporting the issue, LASPO has created more difficulties for suspects who can seek some protection through initial legal assistance rather than the later stage of a case.²⁶

The example of housing benefits can provide a better illustration of these challenges. Since the LASPO act, legal assistance with respect to the challenges of housing benefits is not more funded under legal assistance. This has ended up creating more difficulties for individuals accessing initial legal assistance when they require it. However, initial legal advice on issues regarding housing benefits can help in the resolution of rent arrears.²⁷ This reduces the scope for escalation of problems while resulting in possession evictions and proceedings.

There are common concerns with respect to family law. Majority of the lawyers and organisations who work in the field are raising concerns that the absence of initial legal assistance results in unrealistic expectations set among individuals. This is specific to case merits, their entitlement, and reasonable settlement.²⁸ This provided the potential of exacerbating tensions that result in more cases at the courts while less number of resolutions through negotiation and mediation.

The defence argued by the government in this context is that parents are encouraged for shifting to mediation while avoiding cases from going to court. However, there are only some lawyers recommending mediation to people, while they are ignoring the role played by legal advice in providing mediation effectively.²⁹ Lawyers who practice in family law emphasise that there is huge effectiveness of mediation, with respect to agreement being maintained and reached in the longer run. In cases beyond the scope of mediation, there are more chances for the achievement of negotiation through legal advice.

It has further suggested by the government that NGOs should be ensuring that vulnerable individuals have accessibility of legal support and advice they require.³⁰ While

²⁵ Cape, Ed. "Early access to legal aid in criminal justice processes: A handbook for policymakers and practitioners." *UNDP: Criminal Justice Handbook Series* (2014).

²⁶ Barlow A. Rising to the post-LASPO challenge: How should mediation respond? *Journal of Social Welfare and family law*. 2017 Apr 3;39(2):204.

²⁷ Maclean M, Eekelaar J. *After the act: access to family justice after LASPO*. Bloomsbury Publishing; 2019 Apr 18.

²⁸ Maclean M, Eekelaar J. *After the act: access to family justice after LASPO*. Bloomsbury Publishing; 2019 Apr 18.

²⁹ Barlow A. Rising to the post-LASPO challenge: How should mediation respond? *Journal of Social Welfare and family law*. 2017 Apr 3;39(2):206.

³⁰ Anderson R. Justice for the Rich: Have Changes to the Way Criminal Legal Aid is Awarded Undermined Access to Justice? *Sunderland Student Law Journal*. 2020 Jun 19;1:23.

²⁰ Brooke H, Etherton T. *The LASPO Review: My Recent Talk about the Bach Commission's Report on the Right to Justice*. Birkbeck L. Rev..2018;6:1.

²¹ Berbotto JA. *The role of pre-legislative scrutiny in complex law reform-the case of LASPO and its consequences for family justice*. ISLRev. 2019;6:11.

²² Barlow A. Rising to the post-LASPO challenge: How should mediation respond? *Journal of Social Welfare and family law*. 2017 Apr 3;39(2):221.

²³ Mayo M, Koessler G, Scott M, Slater I. *Access to justice for disadvantaged communities*. Policy Press; 2015 Sep 9.

²⁴ Berbotto JA. *The role of pre-legislative scrutiny in complex law reform-the case of LASPO and its consequences for family justice*. ISLRev. 2019;6:11.

the NGOs will be providing extremely necessary and incredibly valuable circumstances, legal assistance or additional support forms will help in filling the gaps introduced by the LASPO act. However, since the act was enforced, there has been a significant reduction in the access of NGOs providing free legal assistance or any other kind of support.³¹ The increased demand for free legal services has created more difficulties for individuals gaining accessibility of legal support and advice that they require. This will reflect profound consequences for people who struggle in resolving the legal issues effectively and quickly.

Not every breach in law by law enforcement agents or police account to breached human rights. There is also no necessary interference with the right of gaining fair trial. Nevertheless, they hold the scope of detrimentally impacting and causing different situations for accused people and suspects.³² The illegal aspect is highly dependent on national laws for the purpose of regulating police powers. The rights of suspects have significant variations across these jurisdictions. In the initial stage of the process of criminal justice, national laws will allow the regulation of several actions and processes.

4. Conclusion

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³¹ Amnesty International. *Cuts that Hurt: The Impact of Legal Aid Cuts in England on Access to Justice*. Amnesty International, 2016.

³² Anderson R. Justice for the Rich: Have Changes to the Way Criminal Legal Aid is Awarded Undermined Access to Justice? *Sunderland Student Law Journal*. 2020 Jun 19;1:21.

³³ Amnesty International. *Cuts that Hurt: The Impact of Legal Aid Cuts in England on Access to Justice*. Amnesty International, 2016.

³⁴ Barlow A. Rising to the post-LASPO challenge: How should mediation respond? *Journal of Social Welfare and family law*. 2017 Apr 3;39(2):206.