

Legal Aid and Legislative Initiatives

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“ Into the mouths of these dumb, pale and weak.

We have to infuse the language of the soul.

Into the hearts of these weary and worn,dry and forlorn

We have to minstret the language of humanity.”

-RabindraNath Tagore

The above quoted couplet eloquently describes the process involved in the transformation of non- beings into human beings.

Inorder to achieve the objective enshrined in Article 39A of the Constitution , Govt. had ,with the object of providing free legal aid , by a resolution, appointed a committee for implementing legal aid scheme to monitor and implement legal aid programmes on a uniform basis in all the states and union territories. The resolution no. Dated 26th September 1980 of the Govt. of India , Ministry of law, Justice and Company affairs provided for the establishment of CILAS as a centralised body for implementing legal aid schemes and it was to be controlled by a collaboration of the executive and the judiciary .

The three tasks set for CILAS were:

- (i) To formulate in detail and implement comprehensive legal aid schemes.

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- (ii) To monitor schemes for legal aid and advice in the states to ensure their effective functioning as means of securing social justice.
- (iii) To take such other steps necessary and incidental to achieving the tasks set-out in (i) and (ii) above.

CILAS was also expected to consider other matters as might be referred to it by the Ministry . This was a setup seen as a temporary measure anticipating the enactment of a comprehensive legal aid legislation. At a meeting held on 23rd March 1985 CILAS finalised a model scheme for legal aid and circulated it to the states. The main features of this scheme were :

- (a) There was to be an apex body , the State Legal Aid Board, with fifteen members of which a sitting or retired High court judge would be the executive chairman . The executive chairman would have powers to co-opt several of other members who would include representation of workers , women , SCs and STs.
- (b) There would be a committee at the level of the state , the district and the taluk.
- (c) The functions of the state legal aid board included initiating proposals for land reform , performance audit, recommending structural changes in the functioning of the judiciary : promoting research in the area of laws affecting the poor ; organising legal aid camps and loknyayalayas.
- (d) The legal aid board was itself expected to initiate proceedings in cases of public importance , in test cases which were likely to affect a large number of persons and in special cases. PIL was seen as forging an important link between the people in need of legal aid and the courts
- (e) A means test was advocated for determining eligibility but this was not applicable in cases of persons belonging to Vimuktajatis , nomadic tribes , women , children , SCs and STs.
- (f) The recognised modes of legal aid were payment of court fees , representation by a lawyer , supply of free copies of judgements and preparation of paper books.
- (g) Certain categories were kept out of the purview of

legal aid . These included cases of defamation , malicious prosecution , election disputes , proceedings in respect of offences where the fine did not exceed Rs. 50 and proceeding in respect of economic offences against social laws such as Suppression of Immoral Traffic in women and Girls Act , 1956 and Protection of Civil Rights Act , 1955.

While CILAS was generally seen as a right step in the right direction but some felt that it was not bringing about a difference in attitudes concerning the poor. Rajeev Dhawan³ noted - ' I know generally from my two short spells of work in CILAS IN 1981-82 that officials , judges and politicians were by and large not interested in actual schemes and suggestions or really trying to inquire whether they worked . The ministry was only interested in statistics , mainly in the area of expenditure (so that they could show that the money was being spent) . Legal advice (interns of the number of cases in which advice was given) and settlement of cases to show that pressure was being taken off the courts and simultaneously deciding matters concerning the poor. Nobody ever asked if the poor had won their cases and if so , on what terms³.

From within the judiciary also , there was a misgiving that too little had been done after the initial years towards achieving the objectives of the exercise.

“ in the last three years not a single step has been taken in the direction of either of these objects . All that has been done is to liberalise the means test in offering legal services to those who come to court and to hold an occasional legal aid camp where disputes are purported to be settled on the spot.....

What is disappointing is that no programme of legal literacy or para legal training has been undertaken or even prepared and no research work has been taken up either on what ought to be done . By starving the programme of necessary funds the executive managed to frustrate any real gains ensuring to the beneficiaries . Apparently the executive has an alibi which the judges are always in the habit of providing them and here it is that it has done its duty by constituting a committee presided over by a judge of the Supreme Court and of which two members are High

³Rajeev Dhawan , 'The Unbearable lightness of India's Legal Aid Programme, Public Interest Litigation in South Africa, The University Press Ltd., 1997, p- 153-166

Court judges . The committee, of course, feels helpless because it is in no position to launch a nationwide scheme for which it has neither the manpower nor the funds nor the expertise . Meanwhile legal aid languishes ⁴

With its emphasis on civil legal aid and lokadalats ,CILAS did not add much to what legal services already meant in the criminal justice sphere. Studies of some of the schemes show that they perhaps did not achieve their purpose with there being little publicity and consequent awareness among the people about the existence of the programme . The participation of lawyers was unenthusiastic and the quality of legal aid offered was generally poor.

After surveying the functioning of the scheme in Punjab ,Sujan Singh summed up the position as follows :

‘ Anall round dissatisfaction with functioning of the scheme has been recorded. 75.4% beneficiaries are discontented with inexperienced advocates and the other 24.6% express disinterested counsels as the cause of their dissatisfaction and 76.7% of the legal aid counsels are with less than 10 years standing and 63.3% of them join for monetary considerations and only 20% accept this service with a missionary zeal. The remaining 16.7% are legal aid counsels only by the diktat of the judicial officers⁵.’

All this heatburning and churning going on led to the enactment of Legal Services Authorities Act 1987.

Spedfic Legislations:

Whatever standards a man chooses to set for himself be they religious , moral , social or purely rational in origin , it is the law which governs his rights and duties towards the other members of the community. This somewhat arbitrary collection of principles he has very largely to take as he

⁴ O Chin nappa Reddy , ‘ Socialism Constitution and Legal Aid Movement in India AIR 1986 (journal)

⁵ Sujan Singh , Legal Aid: Human Right to Equality , p 312

finds and in a modern society it tends to be so diverse and complex that the help of an expert is essential not merely to enforce or defend legal rights but to recognise, identity and define them⁶.

A review of the model scheme formulated through CILAS revealed that certain deficiencies existed and it was considered desirable to constitute statutory legal authorities at the national , state and district levels so as to provide effective monitoring of the legal aid programmes.

For the disposal of large number of cases expeditiously and without much costs ,LokAdalats have been constituted and they have been functioning as a voluntary and conciliatory agency without any Statutory backing for its decisions. In order to provide for the composition of statutory legal authorities and to provide statutory backing to the lokAdalat and its awards , the Legal Services Authorities bill was introduced in the Lok Sabha on 24th August 1987.

The statement of objects and reasons of the said Act read as follows:

1. Article 39 A of the constitution 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 by reason of economic or other disabilities.
2. With the object of providing free legal aid, government has by resolution dated the 26th September , 1980 appointed the committee for implementing legal aid schemes (CILAS) under the chairmanship of justice P.N. Bhagwati to monitor and implement legal aid programmes on a uniform basis in all the states and union territories. CILAS evolved a model scheme for legal aid programme applicable throughout the country by which several legal aid and advice boards have been setup in the states and union territories. CILAS is funded wholly by grants from the central government . The government is accordingly concerned with the programme of legal aid as it is the implementation of a Constitutional mandate. But on a review of the working of the CILAS , certain deficiencies have come to the fore. It is therefore felt that it is desirable to constitute statutory legal service authorities at the national , state and district level so as to provide

⁶Mathews and Outton: Legal Aid and Advice , London Butterworth, 1971

for the effective monitoring of legal aid programmes . The bill provides for the composition of such authorities and for the funding of these authorities by means of grants from the central government and the state governments. Power has also been given to the national committee and the state committees to supervise the effective implementation of legal aid schemes

3. For some time now ,LokAdalats are being constituted at various places in the country for the disposal in a summary way and though the process of arbitration and settlement between the parties ,of a large number of cases expeditiously and with lesser costs. The institution ofLokAdalats is at present functioning as a voluntary and conciliatory agency without any Statutory backing for its decisions. It has proved to be very popular in providing for a speedier system of Administration of justice . In view of its growing popularity , there had been a demand for providing a statutory backing to this institution and the awards given by lokadalats . It is felt that such a statutory support would not only reduce the burden of arrears of work in regular courts but would also take justice to the door – steps of the poor and the needy and make justice quicker and less expensive.
4. The bill seeks to achieve the above objects

The Legal Services Authorities bill , 1987 which was passed by both the houses of Parliament , received the assent of the President on 11th October 1987 and soon thereafter became an act of Parliament under the short title “ The Legal Services Authorities Act , 1987 . The act, though came on statute book on 11th October 1987, remained in abeyance until it was amended in the year 1994 by the Legal Services Authorities Act , 1994

The bringing into force of the Legal Services Authorities Act was delayed on account of its disapproval by the judiciary and the legal fraternity and the reactions ranged from passive acceptance to trenchant criticism. The Act was discussed at the chief justice's conference and at the meeting of the chairpersons of the state legal aid and advice boards and as a result 56 amendments were proposed. These were incorporated in the Legal Services Authorities bill which introduced in the Rajya Sabha on 14th May 1990. The amendments were essentially about the distribution of powers under the act between the executive and the judiciary and they did not affect the context of legal services. Another important amendment was regarding

making the award of the Lok Adalats as a deemed decree of the civil court and enforceable as such.

The government of the day was in no hurry to push for the changes to be incorporated into the law. It took four more years for the amending legislation to be approved by Parliament and receive the assent of the President. It received the assent of the President on 29th October 1994 and was published in the Gazette of India on 31st October 1994. One year after the amendments were incorporated, on 9th November 1995, the government notified the Act except Chapter III. It took a PIL and three further years of persuasion for the entire Legal Services Authorities Act to become operational⁷.

It is genuinely not possible to make available to the poor the benefits of the legal process, to protect them against injustice and to secure to them their constitutional and statutory rights unless there is a nationwide legal service programme to provide free legal services to them. Hence, to provide justice at the doorstep of the indigent and socially backward class in India, the Legal Services Authority Act, 1987 envisages various establishments for providing legal assistance throughout the country. Under the Act, National Legal Services Authority is the supreme body in the hierarchy of various other authorities and is constituted to formulate policies and schemes for providing legal services to the deserving segment of the society. In every state, a State Legal Services Authority is established to enforce the policies and schemes laid down by the NALSA and to provide legal aid to the people of the state. And then there are district legal services Authorities constituted in every district to implement legal aid programmes and schemes within the district. Further for each of the Taluk or Mandal, a Taluk Legal Services committee is constituted to co-ordinate the activities of legal services in the taluk and to organise Lok Adalats.

According to the provisions of the Act, to obtain the services offered by the statutory authority, an application has to be made in the prescribed form and after examining the eligibility of the applicant, the concerned authority provides the applicant with a counsel at state's expense, pays the required court fees in the matter and bears all expenses incidental to the case. This duty

⁷ Supreme Court Legal Aid Committee v. UOI (1998) 5 SCC 762

serves the announced objective of the Act to provide free and competent legal service to the weaker sections of the society.

The state by enacting such a piece of legislation is supposed to have fulfilled its constitutional obligation of providing legal aid to those who are economically and socially disadvantaged. But it still needs to be analysed as to whether such an enactment has fulfilled its objective and constitutional mandate of promoting equality before law.

Under the Act, there are authorities at the High Court, District and Taluk levels. There is a great deal of subordinate rule making in relation to the number of members of the authorities, their experience, qualifications, powers, functions, terms of office and other conditions. There is a distribution in rule making powers in this regard between the executive government and the authorities. Since the authorities were expected to be manned by the officers and staff either borrowed from government on deputation or given the status of government service, there was considerable concern in relation to their terms and conditions of service. The shift therefore is clearly away from the beneficiary of legal services to the institution dispensing legal services. This state of affairs is not desirable. Further, given the fact that state governments ensure control over the subordinate judiciary in the matter of filling up of vacancies, fixation of pay and providing amenities, the active collaboration of judiciary and executive in the matter of administration of legal services can question the so called independence of the judiciary and the desired separation for its functions from that of the executive as is the mandate of Article 50 of the Constitution. The funding of the legal service programme including organising LokAdalat camps is entirely done by the executive. While proposing the amendments to the Act, the judiciary tacitly accepted the lack of autonomy of the Legal Services Authorities which was attacked by justice Krishna Iyer, in his inimitable style:

‘judges become suspect as seekers of ministerial pleasure. The chairman may tour the country at state expense. The patron-in-chief may present himself at melas, at meetings

which may be held in far flung places. The prestige of the office suffers rather than the autonomy of the council enhances’⁸

The mechanism of the justice is engineered by legal technology which becomes quite difficult to construct without professional expertise. This professional expertise is part of the legal service which is said to be offered by the provisions of the Constitution and the Act. The definition of the legal service is inclusive and attempt is to cover as many services as possible, as legal services under the Act . The enactment makes it mandatory for the State Legal Aid Authority to provide for mandatory legal service to those who are denied access to justice on the basis of economic and other disparities . But the objective of such a mandatory obligation on the State can be achieved only when the legal service so offered is competent and of reasonable quality.

While it is just the moral obligation of the community to offer pro bono services for the poor, it is vice versa for the State . It has been rightly observed by J. Krishna Iyer

“legal aid is not a charity or bounty , but it’s a constitutional obligation of the State and right of the citizens⁹.

The advocates who are engaged by the State Legal Aid Authority must be paid well in order to acquire a quality professional assistance from them and to make the opportunity offered by the Act , a meaningful one for the poor and the needy. It will also ensure that this right no longer remains a myth but becomes a reality. There are insurmountable number of people who cluster under the doorstep of justice, whereas there are only few lawyers who oblige to their moral duty of providing legal aid to the poor. This is the prime reason behind enactment of the Legal Services Authorities Act , 1987 which provides for free legal services at the expense of the state.

However in essence , the centre of this legislation is not the poor litigant or the person in need of legal assistance. It is a legislation that puts forth a structure that can be managed by judiciary and the executive without in any way altering the structure or functioning of the

⁸Legal Schemes Authorities Act : A critique , V.R. Krishna Iyer , p.39

⁹ M.H. Hoskotv. St. of Maharashtra AIR 1978 SC 1548

judicial system except to help it off load its burdens, much of it unrelated to factors within the control of the litigant . In other words, this Act has located a legal aid programme within the existing legal system replete with its flaws and anomalies .MadhavManon who was actively involved in CILAS felt that the Act was not radical enough to give the necessary push to the social justice system now under way . The Act unwittingly tends to draw the poor in the litigation game where bureaucracy will grow, unproductive expense will increase and delivery of services will get marginalised. He further pointed out that since in most situations affecting the poor, legal services were primarily needed to get welfare benefits from governmental agencies or negotiate differences with power groups in the society, one is inclined to hold that the positive aspect of liberal entitlement to legal services is not going to benefit the poor for securing preventive and strategic services outside litigation¹⁰.

The Legal Services Authority Act, 1987 was amended in 2002, making it mandatory for the central authority or as the case may , every state authority to establish permanent LokAdalats in respect of Public Utility devices. ' Public Utility services' has been defined as any (i) transport service for the carriage of passengers or goods by air , road or water or (ii) postal , telegraph or telephone service or (iii) supply of Power, light or water to the public by any establishment or (iv) system of public conservancy or sanitation or (v) service in hospital or dispensary or (vi) insurance service and includes any service which the Central govt. Or the State govt. as the case may be may in the public interest by notification , declare to be a public utility service¹¹.

Apart from Legal Services Authorities Act 1987, Order 33 CPC and S. 304 Cr.P.C. 1973 are also relevant provisions which go a long way in mitigating the sufferings of the weaker sections of the society and in making the right to access to justice a real and meaningful one. The other relevant provisions which may be referred to in this context are S. 56 and S. 57 and S. 303 and S. 363 of Code of Criminal Procedure, 1973.

¹⁰ N.R. Madhava Menon , ' Legal Services Act and Justice to the poor , (1987) 14 (3) Indian Bar Review pp. (i),(ii)

¹¹ Section 22.A and Section 22.B of the Act

The first Law Commission of India in 1958 has examined the question of making available legal aid to indigent accused in criminal proceedings as a part of the 14th report but the real breakthrough came in 1969 when the law commission in its 41st report examined this question and was of the view that the government should make available the right to counsel at least in trials before the courts of Sessions. Again in 1972, the Law Commission of India gave its 48th report where it recommended that all accused persons must be furnished with counsels for their defence at state expense

The Law Commission explained its recommendation thus :

“ Defence of the indigent accused by a pleader assigned by the State should be made available to every person accused of an offence i.e. in all criminal trials, so that mere poverty may not stand in the way of adequate defence in a proceeding which may result in the deprivation of liberty or poverty or loss of reputation In our view representation by counsel is so basic an ingredient of a criminal trial that the law should go as far as possible in seeking that this requirement is not absent. The assistance of counsel is required at every step in the proceedings and irrespective of the nature of the offence under trial¹².’

¹² 48th Report of the Law Commission of India on Some Questions under the CrPC bill, 1970, 1972 p.24