INITIATING LEGAL LITERACY PROGRAMMES

Initiating Legal Literacy Programmes

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SOME STATEMENTS ON LEGAL AID

☐ Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues or the merits by suspect reliance on peripheral, procedural shortcomings... Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker.

—*Justice V.R. Krishna Iyer*

☐ "Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constituional or legal right or any burden is imposed in contravention of any constitutional or legal provision without authority of law or any such wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reasons of poverty, helplessness or disability or socially or economically disadvantageous position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction order or writ.........seeking judicial redress".

—*Justice P.N. Bhagwati*

☐ "Class-actions will activise legal process where individuals cannot approach the court for many reasons".

"Admirable though it may be, it is at once slow and costly. It is finished product of great beauty, but entails an immense

sacrifice of time, money and talent. This 'beautiful' system is frequently a luxury; it tends to give a high quality of justice only when, for one reason or another, parties can surmount the substantial barriers which it erects to many people and most types of claims".

—Justice V.R. Krishna Iyer

❑ "This broadening of the rule of locus standi is largely responsible for the development of public law, because it is only the availability of judicial remedy for enforcement which invests law with meaning and purpose or else the law would remain merely a paper parchment, a teasing illusion and a promise of unreality. It is only by liberalising the rule of locus standi that it is possible to effectively police the corridors of powers and prevent violations of law".

"There is also another reason why the rule of locus standi needs to be liberalised. Today, we find that law is being increasingly used as a device of organised social action for the purpose of bringing about socio-economic change. The task of national reconstruction upon which we are engaged has brought about enormous increase in developmental activities and law is being utilised for the purpose of development, social and economic. It is creating more and more a new category of rights in favour of large sections of people and imposing a new category of duties on the State and the public officials with a view to reaching social justice to the common man, individual rights and duties are giving place to meta-individual collective, social rights and duties of classes or group of persons".

—Justice P.N. Bhagwati

❑ "We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and the other opposing such claim or resisting such relief,

Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal right of large numbers of people who are poor ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of Government. The rule of law does not mean that the protection of the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the fundamental right to carry on their business and to fatten their purses by exploiting the consuming public, have the chamars belonging to the lowest strata of society no fundamental right to earn an honest living through their sweat and toil?

Civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty; utter grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce".

—*P.U.D.R. vs. Union of India*

☐ A new partnership between lawyers, media people, social action groups and judges has grown to evolve an effective strategy called social action or public interest litigation. It has led to the replacing of the adversarial model of litigation with a consensual model and opened up new avenues for lawyering and justicing in the future. A new style of communication is slowly developing whereby the laws are becoming meaningful to the poor and the minority groups while the courts are getting

increased legitimacy and credibility among a hitherto forgotten mass of humanity. The question now is how to consolidate and institutionalise these developments so that the judiciary can be the legitimate arbiter of social and individual rights minimising the scope for conflicts and violence which impede progress.

—Prof. N.R. Madhava Menon

☐ The Supreme Court has issued guidelines to streamline procedures on public interest litigation. An Assistant Registrar has beeh appointed to head the Public Interest Litigation. He will see all the petitions that are received in the Supreme Court in various forms—letters, newspapers, reports. If the letter is sent by a person in custody or is addressed on behalf of a class or group of Poor People, the Chief Justice is to be approached for direction to treat it as a writ petition. If the letter is sent on behalf of an individual not in custody, but complaining of violation of his fundamental right, it must be sent to the Supreme Court Legal Aid Committee after consulting the Chief Justice's principal private secretary.

If an individual complains of violation of legal right the letter must be forwarded to the Secretary of the State Legal Aid and Advice Board concerned. A register of all such letters will be maintained. The forwarding letter must request the secretary of the State Legal Aid Board to intimate what action, if any, had been taken in the matter. The author of the letter must be told that his letter has been forwarded to the State Board and he should contact its secretary for further action.

The Chief Justice will examine monthly statements of letters treated as writ petitions, those sent to the Supreme Court Legal Aid Committee and letters sent to the State Board. An official has been appointed to assist the public in getting the information they want about their pending cases. What the people have to do is to fill up a form and get the information within a day or two.

☐ In a circular sent to all voluntary agencies and social activists, Chief Justice P.N. Bhagwati, Chairman of the Committee for Implementing Legal Aid Schemes (Room No. 148, Block No. 11, Barrack No. 12 Jamnagar Hutments, Shahjahan Road, New Delhi—110011) informs the setting up of a small

sub committee to attend to the problems and dfficulties encountered by various non-political social action groups of social activists, operating in the rural areas at the grassroots level.

The committee will consist of Mr. Justice Bhagwati as the chairman and a few officers from various ministries of the government of India.

The subject of forming the sub-committee, says the Chief Justice, is that whenever any problems or difficulties with the administration are encountered by these groups the attention of this sub-committee could be invited to those problems and difficulties so that the committee can take up the matter with the administration and try to see that these problems and difficulties are resolved satisfactorily without the social action groups or the affected parties having to go to a court of law for judicial redress.

The administration can be persuaded to intervene in a number of matters with a view to helping the poor and underprivileged to realise their social and economic entitlement.

The function of this committee is to ensure that considerable amount of social and economic legislation enacted by the central and state legislatures for the benefit of the poor is implemented by the administration without resorting to any judicial action.

The Chief Justice then called upon the groups to co-operate with the committe drawing its attention to any incidents where any social or economic legislation enacted for the benefit of the poor is not being implemented by the administration at the lower levels or if there is any exploitation or injustice meted out to the weaker sections of the community and if the people are not getting their social and economic entitlements on account of indifference on the part of the official machinery. They can also approach the committee if they encounter any problems or difficulties with the administration.

□ "Public interest litigation is a weapon which has to be used with great care and circumspection. The judiciary has to be extremely careful to see that under the guise of redressing a public grievance it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature".

"The court can interfere if the Executive is not carrying out any duty laid upon by the constitution or law. This is precisely

what the court does when it entertains public interest litigation. If the poor and the underprivilegrd are deprived of their social and economic entitlements, the court certainly can and must intervene to stop exploitation or injustice".

—*Justice P.N. Bhagwati*

LAW AS AN INSTRUMENT OF CHANGE

—JUSTICE P.N. BHAGWATI

I am convinced that if we want to bring about change in the social and economic structures that are responsible for poverty and ignorance, it is essential to activate non-political social action groups and to operate through them.

We have set up a legal service programme at the official level in large parts of the country, but I am not at all sure whether it will succeed, in measurable distance of time, in bringing about any radical changes in the socio-economic structures and reaching social justice to the large masses of our people because, barring one solitary exception, the official organisations are all manned by persons appointed by the State Governments, and I cannot say that in all cases the right appointments have been made. Moreover, the official organisations have no autonomy in the matter of expenditure even within their own budgetary allocation and for most of the items of expenditure they have to go for the sanction of the State Government which naturally takes time and holds up implementation of the legal service programme.

The traditional legal service programme, which consists of providing legal assistance to the poor seeking judicial redress for the legal injury caused to them, is not adequate to meet the specific needs and the peculiar problems of the poor in our country. The success of the traditional legal service programme depends upon at least two factors: (1) the person affected should be able to realise that the problem he faces is a legal problem and that a lawyer can help him, and (2) he must know where he can get such legal help. These two preconditions are markedly absent in our country and their absence would render any

traditional legal service programme ineffective and deprive it of meaning and utility.

Unfortunately our society is still a status-oriented caste-ridden society with marked inequalities among the different strata of society. These social inequalities interact with economic inequalities, and in the process, each strengthens the other. The result is that the element of assertiveness on the part of the poor which, apart from awareness, is another requirement of a successful litigation-oriented legal service programme, is largely absent. There are also psychological and sociological barriers between the poor people and the lawyers who generally come from the upper strata of society or at least share the middle class approaches and attitudes, with the result that a poor man generally finds a lawyer rather remote. The poor may prefer, court exploitation to by-pass exposure to an unfamiliar mileu. Even if a poor man is conscious and assertive, he may still be afraid of social and economic reprisals from his opponent who usually comes from a dominant or powerful section of the community. This is especially true of our rural society where community life is still traditional, where paternalism and not equalitarianism is the dominant attitude, where a poor man is either your dependent or your enemy, but never an independent, conscious and assertive individual. Moreover, the traditional legal service programme is highly expensive and burdensome and it would almost certainly suffer not only on account of paucity of lawyers but also on account of their indifference or lack of enthusiastic cooperation.

Moreover, the traditional legal service programme can function effectively only if there is real legal equality and that in turn presupposes relative social and economic equality. Unfortunately in our country, legal equality is to a large extent only formal because of extreme social and economic inequalities. There is no real legal equality at all and hence the very foundation on which the traditional legal service programme can function effectively is lacking. Furthermore, the traditional legal service programme is actor and not structure oriented. It assumes that the law is just and that injustice results from violation of human rights of the poor is caused mostly by unjust social and economic structures. The result is that the legal aid lawyer sees his function simply as vindicating or upholding

the law and not changing the law or society which accord ing to him is a task that properly belongs to the legislator. The traditional legal service programme cannot therefore attack the problem of poverty and bring about developmental change.

The traditional legal service programme also suffers from the vice of passive acceptance of the fact of poverty and consequent total absence of, or at best inadequate, socio-economic analysis of the nature of poverty and its concomitant injustices. It looks upon the poor as simply traditional clients without money, accepts a static view of the law and regards law as a given dictum which the lawyer has to accept and upon which he has to work, regards the poor as beneficiaries under the programme rather than as participants in it and is confined in its operation to problems of corrective justice and is blind to the problems of distributive justice, and it cannot therefore be effective in bringing about real change in the life conditions of the deprived and vulnerable sections of the community.

What we really need is a legal service programme which is designed to change instead of merely uphold existing law and social strucures and particularly the distribution of power within society, because these are the factors which effectively prevent the poor from fully sharing in the processes and benefits of development. Poverty is the result of our socio-economic institutions, and since law plays a vital part in creating, preserving and protecting these institutions and facilitating their activities, any legal service programme which merely seeks to help the poor in individual cases within the existing framework of the legal system and which does not aim at restructuring the society and reconstructing its socio-economic institutions with a view to eliminating the causes which preserve and perpetuate poverty, involves only a symptomatic treatment of the disease of poverty and cannot by its very nature be adequate to combat poverty and make the poor effective participants in the developmental process.

The poor are unable on account of their poverty to participate effectively in the political process at various levels, and the direct consequence of this is that though legislation presumably intended for their benefit is passed by the legislatures, it is often hedged in by qualifications and exceptions which help the vested interests and the exploiting class and does not go far

enough to meet the needs of the poor and, if I may say so bluntly, it is willing to strike but afraid to wound the powerful sections of the community. Even where there is well-drafted comprehensive legislation, such as the Contract Labour (Regulation and Abolition) Act, the Bonded Labour System (Abolition) Act and the Inter-State Migrant Workmen (Regulation and Condition of Service) Act, it is often not properly and effectively implemented in the interest of the poor and disadvantaged persons for whose beneft it is enacted. Much of the socio-economic legislation passed by the legislatures has remained a paper tiger without teeth and claws. Even the benefits of various social and economic rescue programmes initiated by the Central and State Governments through administrative measures have not effectively reached the poor and weaker sections of the community. Of course when I say this, I do not wish to suggest for a moment that all legislative and administrative resource programmes have failed of their purpose on account of lack of proper implementation but quite a few of these measures have not been effectively implemented in some parts of the country, and even where they are implemented, the benefits have been confined to the upper crust of the weaker sections and they have not reached the lowliest amongst the low and the weakest amongst the weak.

The poor have been worsted in their encounters with the dominant sections not only in the courts but also before public authorities; they have often failed to get a fair deal even from the police authorities, for instances are not unknown where complaints by Harijans, Adivasis and landless peasants against persons belonging to higher castes and rich and privileged persons, against persons belonging to higher castes, rich and powerful landlords or contractors are not registered by the police and the poor have to continue to suffer injustice silently and helplessly. The poor have come to look upon law as an enemy rather than as a friend, because it is always taking something away from them rather than giving anything to them. They find that the law is unjust and is heavily weighted against them and they have lost all faith in the capacity of the law to help them to change their life conditions.

Since the poor are the victims of an unjust social and economic structure, it is not going to help them very much to

have a legal service programme which works within the existing framework of the law. It is necessary to have a dynamic and effective legal service programme which would extend and undertake a new style of approach to the law and redirect the nature of the demand for legal services so that the poor would be able to see law as an instrument of social change and economic restructuring. Throughout history, barring the cases of India of Gandhi, the road to significant socio-economic change has been strewn with death and destruction. It has always been a pitched battle between the disadvantaged and the privileged, the powerless and the powerful. But we have to bring about socio-economic change and build a new socio-economic order where every one in the country would be equal participant in the fruits of freedom and development through the process of law, and it is therefore vital that our social action groups should free themselves from the shackles of outdated assumptions about law and poverty, face the challenge of reality and bring a fresh outlook and original unconventional thinking to bear on the subject and adopt a comprehensive legal service programme which should be bold in its approach, ambitious in its design and radical in its strategy.

Our social action groups have therefore to evolve a strategy directed towards bringing about change in the social and economic structures which are responsible for the creation and perpetuation of poverty and denial of justice to the large masses of people. First and foremost, it is necessary to make socio-legal investigations for identifying what are the injustices from which the deprived and vulnerable sections of the community suffer within the geographical area of their operation, what are the deprivations of basic human rights suffered by them and what are the social and economic entitlements, whether under legislative or administrative measures, which do not reach them. The social action groups should also ascertain by socio-economic surveys whether there are any detrimental effects on the poor of the policies and programmes of the Government as also whether there are any inconsistencies between its policies and actuations on the one hand and the aims and the principles it professes on the other. Through these socio-legal investigations, these groups can bring the inadequacies in law-making as also in law-implementation to the notice of the Government

with a view to persuading, if not pressurising, the Government to take appropriate remedial measures, and in any event, the exposure of these inadequacies is bound to alert the Government to take necessary steps for removing the same,

Basically, in a democracy, men in Government are accountable to the people to whom they have to turn every five years for a vote, and appeals to their conscience by exposure of the inadequacies cannot ordinarily fail to activate them. If the Government or the bureaucratic machine does not respond to the exposure of inadequacies by taking adequate remedial steps, the social action groups can then resort to the judicial process for vindicating the rights of the poor and ensuring to them their social and economic entitlements. Now the doors of the courts have been thrown open by the latest judgement of the Supreme Court in the Judges Appointment and Transfer Case and the narrow doctrine of locus standi which inhibited enforcement of the rights of the vulnerable sections and operated to deny social justice to them, has been ripped through by a stroke of creative statesmanship. It has been laid down in this judgement that where legal injury is caused or legal wrong is done to a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach the court for judicial redress, any member of the public acting bonafide can bring an action in court seeking judicial redress for the legal injury caused or the legal wrong done to such person or class of persons. Social action groups can therefore now take initiative and bring the broblems of the poor before the court by taking advantage of this expanded doctrine of locus standi if they find that administratively, there is no response and deprivation and exploitation remain unredressed.

The second arm of the strategy to be adopted by social action groups is education of the poor and the disadvantaged. The poor must be made aware of the rights and benefits conferred upon them by socio-economic legislation as also by administrative social and economic rescue programmes. They must be shown how these rights are often inadequate or inadequately enforced and the social action groups must search with them for the causes of these inadequacies and together they must devise legal and social solutions. This process will produce

a heightened awareness in both the poor and the social action groups.

Today the position is that the entire legal system has failed to inspire confidence in the poor because the poor in their contest with the legal system have always been on the wrong side of the line. They have always come across the "Law for the Poor" rather than "law of the poor". The law is regarded by them as a negative and restraining force, something deeply mysterious and forbidding and not a positive and social device. If we may quote Robert F. Kennedy: "To the poor man, 'legal' has become a synonym simply for technicalities and obstruction, nor for that which is to be respected. The poor man looks upon the law as always taking something away". This attitude of the poor towards law is, to a considerable extent, due to their ignorance of law, their lack of experience with the beneficial aspects of law and their consequent lack of use of it for the protection and furtherance of their own interests. This lack of confidence is highly dangerous because it would seriously impair the efficacy of the legal system and corrode the foundations of the rule of law.

Legal awareness of the poor would, therefore, bring a further advantage of increasing the viability and effectiveness of the legal system by creating confidence in the poor and enabling them to make conscious use of law as an agent or instrument to further their interests. It is through awareness of their rights and benefits that they will become strong and self-reliant. The social action groups must therefore undertake a massive programme of creating legal awareness amongst the poor. The programme should be wholly functional and oriented towards solution of the legal problems of the poor. It must be calculated to promote group consciousness, group dialogue and group action. The educational campaign must be aimed at advertising broader meanings of the actual or putative case load of the legal service programme aimed at producing a political dialogue and not simply a technical dialogue about legal rights.

In other words, the thrust of the educational campaign ought to lend itself to political activity and not simply reinforce a narrow conception of the legal system. The emphasis should be characterised by a shift from the individual to the group, from the specific to the general. The approach should be not "you

and the law" or "your rights", etc. but "the poor tenant or farmer" or "the agrarian movement or labour movement". The emerging symbols of group and self identify should be exploited. The educational programme should inculcate skills required for translating existing legal remedies or existing legal rights into more broadly conceived remedies and into threshold demands. It should be viewed as a process whereby opportunities are created for converting an inchoate sense of injury into both a view of shared experience and a new set of articulated demands for service. The educational effort must become a significant factor contributing to the social development of the poor.

This dialogue we are suggesting as a part of the education process is not something extraordinary or unusual. It would not be unique in the field of poverty law. Not only in other countries but also in India corporate lawyers have participated in a similar type of dialogue with their clients not only in one-to-one situations but also through trade associations and common groups. The point is that so far, the poverty clients have been almost totally deprived of this kind of dialogue which is so essential for making them strong and self-reliant, investing them with dignity and self-respect and instilling in them confidence in the legal process and capacity to use the legal process for solving their problems and advancing their interests.

Then another arm of the strategy and by far the most important arm, is to encourage the poor to organise and mobilise themselves, to urge them to co-operate with other groups similarly situated and to motivate them to invent and use meta-legal tactics to supplement and strengthen standard legal tactics to change law and society. Stephen Wexler has said: "Poverty will not be stopped by people who are not poor. If poverty is to be stopped, it will be stopped only by poor people. And poor people can stop poverty only if they work at it together". The poor and the oppressed must rely on their own efforts and not on lawyers, not even on social action groups to fight poverty and to change their life conditions. Their efforts must be organised to be effective not only because of the strength of numbers but also because the poor have been alienated from each other as much as from the elite; they are subject to the same temptations and suffer from the same facilities as all men and they have to learn to work together, since in the end, they

will attain development only by that self-liberation which generates social liberation. It is only if the poor are organised effectively that they will be able to overcome the sense of helplessness —the most serious obstacle to development—that centuries of oppression have instilled in the poor and replace it with a sense of power that will release the creativity and the drives immanent in them.

It will not be enough to adopt measures limited by an ameliorative approach to the problems of poverty. This approach has often been structured quite openly as a complement to "trickle down" economic growth policies. Its apparent function has been to ameliorate the problems of the poor to gain time until real growth reaches them. But it is common knowledge that the trickle has been insignificant. It has been limited to that which has been able to get through small cracks in the dams of power, social and economic, dams which have everywhere been deliberately erected to block the flow. It is therefore necessary to develop the alternative strategy of organising the poor so that they are able to act on behalf of their own interest, individually as well as collectively. The conventional welfare approaches have had the opposite effect of perpetuating and reinforcing the dependency and powerlessness of the poor. The Legal Services Programme must avoid creating perpetual dependency and helplessness on the part of the poor and make them, instead, self-reliant.

Self-reliance depends upon knowledge and power. Knowledge comes with education of the rights and benefits and power comes only through organisation. It is, therefore, through organisation that the poor can become powerful and they can fight injustices on their own. Organising the poor and preparing them for confrontation against unjust practices, unjust rules and unjust institutions and helping them to work for basic institutional changes will help to change them, to make new men out of them.

The next arm of the strategy must be to train para-legals or what one may call bare-foot lawyers. Training of para-legals or bare-foot lawyers in the basic concepts of law, legal procedure, relevant provisions of socio-economic legislation, tactics and counter-tactics in the use of law and legal proceedings and skills needed to solve the problems of the poor is absolutely essential,

if we want to help the have-nots and the handicapped. In fact, my Committee recently organised a training camp of para-legals or bare-foot lawyers for 24 tribal youths in Koraput District of Orissa with the assistance of the Orissa Legal Aid Board. My Committee is also now shortly going to organise a similar training camp for representatives of social aciton groups in the Sates of Bihar and Uttar Pradesh, and soon thereafter a similar training camp is proposed to be held in Madhya Pradesh. Each social action group must have at least two or three para-legals or bare-foot laywers who would identify the problems of the poor, give voice to their demands protect them against injustices, alert them against deprivation and exploitation and give them first aid in law. They could also help in promoting legal awareness amongst people and equip the poor with the knowledge of how law works and how to use law to assert or defend their rights.

But the question immediately arises as to how to fund the various programmes which may be undertaken by social action groups. I do not think it would be possible for such groups to receive any direct funding from the Government. But if there is an autonomous legal service corporation, it can certainly fund social action groups out of its own budgetary allocation, provided, of course, such an autonomous legal service is bold and innovative in its approach and not hamstrung by governmental control or amendable to governmental influence. But independent of funding from any outside source, the social action groups must find their own funds which may be collected from social service organisations and public sprited individuals. The lawyers working with them should also as far as possible charge no fees for their time and services and work with a sense of dedication. It is a highly debatable question whether the social action groups should receive directly any foreign funding, because foreign aid does create a certain sense of dependency and strikes at the root of self-reliance and availability of easy finances does tend somtimes to deflect social workers from grass-root work, making them spend more on administrative structures and adopt an elitist approach. Moreover, the kind of legal service programme I have outlined is basically directed against the Estabilishment, and foreign funding may become suspect. This is a delicate question which will have to be considered by the

social action groups, namely how far and to what extent and in what manner foreign funding should be allowed to be utilised for legal service programme.

There is also one other matter which I would like to mention, and that pertains to social action litigation. The social litigation which I have in mind is for vindicating the rights of the poor and ensuring to them their basic human rights. It is in this respect that the social action litigation I envisage is a little different from the public interest litigation of the United States. I do not want social action litigation to be biased in favour of urban middle class consumers, nor would I like it to be indebted for its inspiration to the American public interest law experience. If there is an unreasonable hike in air fares or if defective air-conditioners are supplied by an industrial organisation, a consumer interest group may start public interest litigation to remedy this state of affairs, but so far as the social action groups are concerned, I would humbly suggest: Do not divert your energies in vindicating the rights of the urban higher or middle class but concentrate on developing and promoting social action litigation for the benefit of the large millions of our people who are living a life of want and destitution and suffering injustices for centuries.

This is the only way in which we shall be able to bring about revolution through law. We have a long way to go. We have to wipe the tears from the eyes of the starving millions of our country. We have to redeem the pledge we gave them when we enacted our Constitution. This pledge has to be redeemed through the process of law—law which is not static but dynamic—law which does not stand still but moves on—law which draws its sustenance from the past and yet looks out into the future—law which is ready to march forward in the service of the weaker sections of the community: law of which Justice Cardozo said: "The inn that shelters for the night is not the journey's end—law like a traveller must be ready for tomorrow".

LEGAL AID : CONCEPT, POLICIES AND DELIVERY SYSTEM

An Introduction to the Legal Aid Schemes And Implementational Strategies

—PROF. N.R. MADHAVA MENON

Legal Aid : The Concept, It's Basis and Scope

The Constitution of India which the People of India adopted and gave to themselves in 1949 envisaged to secure to all its citizens :

> "JUSTICE, Social, economic and political;
> LIBERTY of thought, expression, belief, faith and workship;
> EQUALITY of status and of opportunity..."
>
> (*Preamble*)

In an unequal society with centuries-old traditions of exploitation and discrimination, the above Preambular promise raised formidable problems and challenges with regard to structure, strategy and speed in administration generally and judicial administration in particular. Part III and Part IV of the Constitution of India, which contain the Fundamental Rights of citizens and the Directive principles of State Policy respectively, provided the framework for actualising the Preambular pledge serving as light-posts as it were, for the exercise of State power through the instrumentality of law and administration. Thus Article 14 of the Constitution mandates that,

> "The State shall not deny to any person equality before the law or the equal protection of the laws....."

Further, Article 21 of the Constitution declares that,

> "No person shall be deprived of his life or personal liberty except according to the procedure established by law".

The following Article (Article 22) further states that,

> "No person who is arrested......shall be denied the right to consult, and to be defended by, a legal practitioner of his choice".

The above provisions which constitute part of basic feature of the Constitution, the fundamental law of the land, are absolutely binding on the government and are guaranteed freedoms of the people. So long as the Constitution reigns supreme and rule of law prevails in the country, there is no alternative except to make the legal system work in in such a way as to deliver equal justice to all irrespective of one's social status, economic power or political influence. The question, therefore, is does the system operate in the constitutionally mandated style and, if it does not how can it be made to work through the instrumentalities of law and government?

The Constitution itself has provided the strategy to set right the inequalities of the system. The strategy is to be two-fold. On the one hand, the State is to direct its legislative policies in such a way as to—

(a) inform all the institutions of the national life with ideas of justice, social, economic and political; (Article 38 (1));
(b) minimise and eliminate inequalities in status, facilities and opportunities (Article : 38 (2));
(c) secure to all the citizens adequate means of livelihood;
(d) distribute ownership and control of material resources of the community to subserve the common good;
(e) prevent the economic system leading to concentration of wealth to the common detriment;
(f) secure equal pay for equal work for both men and women;

(g) prevent the abuse of the health of workers, tender age of children and economic necessities of citizens;
(h) protect childhood and youth against exploitation (Article 39 (a) to (f));
(i) endeavour to provide right to work, to education and to public assistance in cases of unemployment, old age, sickness, disablement and in other cases of underseıved want; (Article 41);
(j) secure just and humane conditions of work and for maternity relief; (Article 42);
(k) secure to all workers a living wage, conditions of work ensuring a decent standard of life; (Article 43);
(l) secure the participation of works in the management of undertakings in industry; (Article 43-A);
(m) secure for the citizens a Uniform Civil Code throughout the territory of India; (Article 44);
(n) provide free and compulsory education for all children until they complete the age of 14 years (Article45);
(o) promote the educational and economic interests of the weaker sections of the people and, in particular, of the scheduled castes and scheduled tribes and protect them from social injustice and all forms of exploitation; (Article 46):
(p) raise the level of nutrition and the standard of living of the people; (Article 47); and
(q) protect and improve the environment, safeguard the forests and wild life of the country; (Article 48-A).

The Constitution has taken cıre to ensure that the above directives are not neglected by successive governments at the Centre or in the States and has declared in Article 37 as follows :

"The provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless *fundamental in the governance of the government and it shall be the duty of the State to apply these principles in making laws.*"

The second part of the two-fold strategy provided for by the Constitution for setting right the inequalities of the system is a

functional one indicated in Article 39-A in the form of legal aid to the poor. That Article reads as follows :

"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."

The Constitutional provisions listed above constitute the basis for social justice through law. Legal aid is its operational arm. Legal aid is not just a dogma but a dynamic instrument for access to justice to be developed imaginatively through law and practice at every level of the Social, Political and Economic Systems. The traditional concept of legal aid limited the scope of the right to representation by lawyer in judicial proceedings. In the circumstances of India, legal aid has come to comprehend not only litigative aid in Courts and Tribunals, but also legal literacy of every section of the people appropriate pro-active legal advice and preventive legal services, political and social mobilisation of weaker sections for legal action, public interest or social action litigation, demoralisation of judicial remedies and legal activism, reform of the law and its procedures to facilitate social justice and development of a new legal culture in tune with the Constitutional values and aspirations. In this sense, legal aid has to become a multi-dimensional strategy for social re-construction in which judicial process has to assume new approaches, evolve new techniques and articulate new principles mostly unknown to the inherited common law jurisprudence. Those who have been observing the Indian Legal Scene particularly during the last decade or so, will have discerned the trend towards the unfolding of these approaches, strategies, techniques and principles particularly in the field of judicial administration at the highest level. Law, Courts and administration are not any more of concern of only lawyers, judges and bureaucrats but are developing as popular forum for testing social policies, economic programmes and political power arrangements in the community. Issues which were once considered as matters of religion are being adjudicated in terms of

Constitutional values of equality, secularism, and socio-economic justice. Legal aid is to accelerate the process of illuminating every department of life with constitutional light and is to provide more easy and effective access to justice to everyone, rich or poor, young or old, man or woman. Naturally such a programme of action cannot be confined to lawyers and judges alone. It has to have the People of India involved at every level. The success of legal aid in India, no doubt, depends on the degree of involvement of the consumers of justice in formulation of legislative policies, in the dissemination of legal information, in the mobilisation of people to agitate for their rights through legal process, in arousing the social and judicial conscience against in justices wherever they occur and in whatever form they do and finally in evolving a system which prevents causes of injustice and makes legal interventions unnecessary.

The expert Committee on Legal Aid apppointed by the Central Government in its report in 1973 in conclusion stated :

> "The rule of law underlies our entire social, economic and governmental structure as well as Constitutional order. The Indian way of life will lose its soul if social justice ceases to be the *dharma* holding us together as a nation. And so it is that we want legality and not be wet with the tears of poverty. For, surely the law of life will outlaw lawyer's law unless the strategy of bringing law-in-action into rapport with the norms of justice is put into operation and the cost of the legal system is brought into fair concord with the economic conditions of the country. In this humanist perspective, our concern has been to view the welfare-inspired legal aid programme not as professional gratuity but as the juridical arm of *Garibi Hatao*. For this reason, we have given a social sweep to our scheme which exceeds the court room, the lawyer's chambers, the traditional legal aid and advice thinking, techniques and machinery."

Report of the Expert Committce on Legal Aid,
Ministry of Law and Justice, Government of India
(1973) p. 243.

Legal Aid and its Development as a Constitutional Right:

The Constitutional status of free legal aid to indigent litigants at State expense was not recognized either by the Government or by the Courts in the first two decades after independence. The status of legal aid during that period may be summarized as follows :

1. In Civil cases under Order XXXIII of the Code of Civil Procedure, a person can be allowed by a Court to sue as a pauper if the Court found the person not possessed of sufficient means to enable him to pay the Court fee or where no such fee was prescribed, when he was not having property worth Rs. 100 other than his necessary wearing apparel and the subject matter of the suit.
2. In criminal proceedings, Article 22 (1) of the Constitution guaranteed the right of every accused person to consult and to be defended by a legal practitioner of his choice. Section 303 of the Criminal Procedure Code also provided for this right even before its recognition by the Constitution as a fundamental right. However, the obligation of the State/Court was interpreted to mean only providing an opportunity of being defended by a lawyer at his own expense. Provision of a lawyer to an accused at the expense of the State was recognized only in certain cases as provided for in Section 304 in the trial before the Court of Session. Clause (3) of that Section also enables the State Government to extend the benefit of Clause (1) to any class of trial before other Courts as well. In other to get the benefit of this section the Court should be convinced that the accused has not sufficient means to engage a pleader.
3. Some voluntary organizations, professional bodies and individual advocates volunteered free legal assistance to certain categories of persons. This included not only legal advice but also legal representation in Court and litigative expenses. In some cases, Courts also on an ad hoc basis appointed lawyers as *amicus curae* to conduct a matter on behalf of an indigent client.

The above position was obviously too inadequate to provide access to justice to the large majority of poor, illiterate rural people of India for whom the Constitutional promise remained in paper ever after two decades of freedom. It was in this context a national conference on the legal aid was convened in New Delhi under the auspices of the Institute of Constitutional and Parliamentary Studies in early 1970. Several recommendations for restructuring legal aid delivery system emerged out of this conference. More importantly a new awareness in the government and in the legal profession was generated which led to the setting up of expert committees on legal aid at the level of Central and State Governments in the following years. Among these, the reports of the Legal Aid Committee appointed by the Gujarat Government (1971), the report of the One-Man Committee on Legal Aid to the Poor appointed by the Tamilnadu Government (1973), the report of the Preparatory Committee for Legal Aid Schemes appointed by the Madhya Pradesh Government (1975), the report of the Expert Committee on Legal Aid appointed by the Government of India (1973), the report of the Law Reforms and Legal Services Committee appointed by the Government of Rajasthan (1975) and the report of the Committee or Juridicate appointed by the Government at India (1977) are important documents which studied the problem of regional and national levels and provided the blueprints for appropriate action on the part of the governments concerned. On the basis of the report, Madhya Pradesh Government soon introduced a bill in the State Assembly and got a law passed providing for legal aid to the poor throughout the State. The Gujarat Government asked the Chief Justice of the State to organize a scheme on the basis of the report for introducing legal aid in a phased manner. In Tamilnadu a society was registered to organize legal aid throughout the State to which the State Government made liberal grants.

While these developments were taking place in the legislative and executive fronts in some of the States, the judiciary interpreted the Constitutional provisions to establish legal aid to a fundamental right. In Hussainara Khatoon (IV) *vs* Home Secretary, State of Bihar (1980) 1 SCC 98, the Supreme Court observed:

"...The right to free legal services is clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under mandate to provide a lawyer to on accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such a lawyer."

The same view was taken in an earlier decision in M.H. Hoskot *vs.* State of Maharashtra (A.I.R. 1978 S.C. 1548). In a later decision in Khatri (II) *vs.* State of Bihar (1981) I.S.C.C. 627 the Supreme Court further clarified that the State cannot avoid its Constitutional obligation to provide free legal services to indigent accused persons by pleading financial or administrative inability. It was further held in this case that the Constitutional obligation to provide free legal services in indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the Magistrate. The Court went a step further and cast a duty on the Magistrates and Sessions judges to inform the indigent accused produced before them of their entitlement for free legal services. According to the Court the only qualification would be that the offence charged againstthe accused is such that, on conviction it would result in a sentence of imprisonment. The Court added that in cases of economic offences or offences relating to prostitution, child abuse etc. the State may be justified in denying free legal services.

The Status of legal aid in criminal proceedings as a fundamental right was fully recognised by the Supreme Court in a recent case, Suk Das *vs.* Union Territory of Arunachal Pradesh (AIR 1986 S.C. 991) where it stated:

"...It may, therefore, now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and thus fundamental right is

implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21."

Discussing the question whether the exercise of this fundamental right is conditioned upon the accused applying for free legal assistance, the Court in Suk Das case declared that the trial would be vitiated if the accused was not informed of his right to free legal assistance. The Court disagreed with the view of the High Court that since the appellants did not make an application for free legal assistance, no unconstitutionality was involved in not providing them legal representation at State cost. To support this liberal view of the scope of the right the Supreme Court said:

"...It is common knowledge that 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred on them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis-oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty magnifies the impact of the legal troubles and difficulties when they come. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant; they cannot help themselves. The law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programme for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helpnesses. This miserable condition inwhich the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognized as one of the principal items of the programme of the Legal Aid movement in the country to promote legal literacy. It would in these circumstances make a mockery of legal aid if it were to be left to a poor, ignor-

ant and illiterate accused to ask for free legal service. This is the reason why we ruled in Khatri vs. State of Bihar (AIR 1981 S.C. 928) that the Magistrate or the Sessions Judge before whom an accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State.... We also gave a general direction to every State in the country to make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situations."

While this development of the law relating to legal aid evolved through judicial interpretation of the Constitutional provisions, the State and Central Government in their turn gave the necessary fillip to the legal aid movement firstly, by introducing free legal aid as a Directive principle of State Policy through the Constitution (Forty-second Amendment) Act, 1976 and secondly, by setting up legal aid schemes either statutorily or otherwise funded by the State. While the judicial formulation related only to legal aid in criminal proceedings, the State and Central schemes of legal aid comprehended every aspect of legal assistance including legal literacy, law and judicial reforms and preventive legal services. An examination of some of these schemes is necessary to know the present status of legal aid in the country.

Legal Aid Scheme of CILAS

CILAS is the acronym for the Committee for Implementing Legal Aid Schemes. It was set up by the Government of India in September 1980 under the Chairmanship of Mr. Justice P.M. Bhagawati (now the Chief Justice of India and patron-in-chief of CILAS) for implementing the recommendations of the Juridicare Committee (1977) which consisted of himself and Mr. Justice V.R. Krishna Iyer. CILAS evolved a model scheme of legal aid soon after its establishment which, with certain changes, came to be adopted by most of the states and Union Territories.

The concept of legal aid adopted by CILAS for implementation throughout the country is the dynamic social-justice orient-

ed scheme as recommended by the Expert Committee (1973) and the Juridicare Committee (1977). Equal justice is taken to comprehend social justice—"Justice which takes within its compass not only a fortunate few belonging to the privileged classes, but large masses belonging to the under-privileged segments of society, justice which penetrates and destroys inequalities of caste, community, sex, race or wealth and brings about equitable distribution of the social, material and political resources of the community". The object is to inject equal justice into legality through a dynamic scheme of legal aid.

The legal aid programme being implemented by the Committee includes two major approaches, namely (a) Litigative legal aid, and (b) Preventive or Strategic legal aid. Traditionally when one speaks of 'legal aid', one tends to suggest a programme of providing legal representation for the poor in Court. Such programmes are good and are necessary for reducing at least one of the inequalities created by the legal system to the disadvantage of the poor. But such a scheme will have limited scope to meet the problems of poverty in India and to deliver social justice. This is because legal equality pre-supposes social and economic equality. Furthermore, such an approach accepts that laws are basically fair and lawyers are required only to correct its unfair incidence. Change of the law and use of law for spocial and economic equality (distributive justice) are not part of the legal services of the traditional model. As such CILAS gave priority to the latter approach in the legal aid programme which it called Preventive or Strategic legal aid. Here the focus is on reduction or elimination of poverty itself by altering the conditions which create or perpetuate poverty rather than just enabling the poor to have the services of a lawyer in Court. It does not assume that litigation can play an important role in the life of the poor. It concerns itself with the problems of the poor as a class rather than looking only at the problems of individual poor litigant. Institutional change towards an egalitarian social structure and organising the poor towards self-reliant development are intended by strategic legal aid.

CILAS attempts to implement the above two-fold programme of legal aid firstly throug broad-based Legal Aid Boards set up in each State and Union Territory and secondly,

through encouraging grass-root level social action groups and non-political people's organizations to adopt preventive, legal services in rural and urban areas. Every State is to have a State Board for Legal Aid composing of persons representing the Bar, the Judiciary, the Legislature, the Government and the consumers of legal aid. The Executive Chairman of the Board is to be a sitting or retired High Court Judge and its Secretary is to be drawn from the State higher judicial service. The composition in principle leaves the administration of legal aid in the hands of the legal profession and voluntary bodies with the judiciary having a dominant role. The Board is both a policy planning and programme implementation body. The Board constitutes District and Taluka Legal Aid Committees with similar composition with the District Judge or the Taluka Magistrate presiding over the respective Committees in their jurisdiction.

The Committees do not give aid directly to any person. It determines eligibilty of applicants for legal aid, prepares panels of lawyers to whom cases are to be assigned, disburses payments and maintains accounts, submits reports and co-ordinates legal aid programmes including preventive services in the area.

CILAS recommended free legal aid to persons belonging to Scheduled Castes, Scheduled Tribes, women and children irrespective of economic criteria. While some States have adopted the CILAS formula, others have fixed eligibility standards of income varying between Rs. 5,000 and Rs. 6,000 per annum. Legal advice, however, is given free to all. Most states have adopted an easy procedure for ascertaining income through an affidavit of the person concerned supported by a certificate from any responsible person of the locality. Others require a certificate from appropriate revenue officials.

The legal ald committees often maintain several legal aid centres in court premises and outsibe where at pre-determined hours duty counsels or paid lawyers wiil visit to give legal advice and interview and process applications for litigative assistance. In some States, legal aid lawyers regularly visit jails and other custodial institutions for giving legal advice and to receive appropriate cases for further legal aid. They are called Duty Counsels.

The State Board gives publicity on the availability of legal

aid at District and Taluka Centres and develops new programmes which it conducts itself or in co-operation with legal aid Committees at different places in the State. Such programmes include legal literacy projects, public legal education, legal aid camps for resolution of disputes through conciliation and negotiation, involvement of law students and social workers in para-legal services, para-legal training, socio-legal research on problems of the poor, law reform on behalf of the poor and public interest litigation.

Funds for the legal aid activities in the States come from the grants made available by the State Government and the CILAS, donations received from public orgaizations and costs awarded by courts in legally aided cases.

Legal aid schemes more or less on the above model have been instituted in fourteen States and Union Territories of which three (Madhya Pradesh, Bihar and Karnataka) have put it on a statutory basis, nine through executive orders or resolutions (Andhra Pradesh, Gujarat, Maharashtra, Meghalaya, Orissa, Himachal Pradesh, Rajasthan, Uttar Pradesh, Delhi and Pondicherry) and one through a registered society (Tamilnadu). Apart from the above fourteen States, there are legal aid schemes in operation in Kerala and West Bengal which have adopted an approach different from the model schemes of CILAS. According to this, legal aid is organized mainly as a government activity controlled by the Department of Law which have appointed private lawyers on regular salary to attend to legal aid cases, if any, brought to them from their jurisdiction. This model is largely concened with litigation-oriented legal aid. In few other States, the legal aid available is what has originally been there, namely, provision for proper suits and appeals under C.P.C. (Order XXXIII) and State appointed lawyer in Sessions trials under Section 304(1) of Cr. P.C. However, some of these States, appreciating the utility of the broad schemes recommended by CILAS have started taking steps to constitute Legal Aid Boards and allocating larger funds for preventive legal services as well.

The State Legal Aid Boards have set up special legal aid Committees at the High Court level and CILAS constituted a Supreme Coust Legal Aid Committee financed directly by CILAS.

The infra-structure on legal aid thus built-up throughout the country is kept flexible both in organization and methodology in order to adapt itself in the light of experiences gained. A variety of voluntary social groups and professional bodies both legal and non-legal have been linked up with the legal aid Committees at different level for functional purposes on the basis of specific projects. In many places a movement for equal justice under law with people's participation is under way. Social action groups play a vital role in such mobilization activities.

CILAS gives great importance to the preventive and strategic aspects of legal aid which has at least six major components. These components together provide a package of preventive and strategic legal services which, imaginatively applied, make litigative aid unnecessary in a number of situations.

Preventive or Strategic Legal Aid

Firstly, preventive services adopt a variety of processes for communication of the law even to the non-literate people and for *promoting awareness of rights* and benefits conferred on the poor by Central, State and local laws. Legal education in schools and colleges, para-legal training of grass root level social workers, audio-visual programmes on law in the mass media, public legal education through adult and continuing education programmes, etc. are some of the programmes of legal literacy. In this effort a large number of voluntary agencies and educational institutions are already involved. A National Plan for Legal Literacy is now evolved by CILAS and is systematically being implemented to give momentum to voluntary efforts.

Secondly, to make legal services available to the community at their door steps and to help settle disputes fairly, expeditiously and cheaply, legal aid committees organize Legal Aid Camps in rural areas periodically. Camps are organised with the help of village communities and are attended by judicial officers, legal aid lawyers, revenue, police and welfare administration of the region and public-spirited individuals. They divide themselves into different units interviewing the people and giving necessary legal guidance and advice for seeking redress of grievances. Matters which can be administratively resolved are attended to by the concerned official often giving immediate

reliefs. Disputes between private parties are negotiated by the lawyers/judges and a fair settlement arrived at with the full participation of the disputants. Issues which deserve assistance in court are processed for follow-up action at the committee level. Record is kept of the matters attended to and data on poor people's problems are gathered for corrective action at the governmental level. Through distribution of educative pamphlets. screening of films and public lectures, the experts at the legal aid camp try to educate the village folk of their rights under law and inform them of the availability of free legal services at the Committee offices in the District or Taluka as the case may be. In short, conceptually the Legal Aid Camps constitute a complete package of aid and advice at the doorstep of the village community developing institutional links and communication channels between the people and the administration. Every year hundreds of camps are held in different States some extending for more than a day even in remote villages and tribal areas settling a variety of disputes and organizing the poor to assert their rights through legal channels.

Another service closely related to the camp is the concept of *Lok Adalat* (Nyayalaya) usually held with the camps and sometimes independently in both urban and rural areas. The policy is to prevent litigation, and continuation of avoidable litigation and to settle litigation by negotiation, arbitration or conciliation. The advantage is reduction of cost, elimination of delay and avoidance of bitterness between parties which are inevitable adjudicative process. Unlike adjudication, neither side makes a total victory or total defeat in Lok Nyayalaya and both sides go away reasonably happy when they are told by impartial lawyers and judges of the merits of their respective positions under law and the demands of justice in such factual situations. The uncertain consequences of litigation with its attendant cost and delay are conveyed to the parties. To gain the confidence of parties Lok Nyayalayas are presided over by three or more respectable persons including a lawyer or judge (retired) and the settlement is reduced into writing and signed by the parties and the judges. These peoples' courts sit at convenient places at specified times and follow a cordial, informal atmosphere and a non-adversarial procedure. In some States the experiment succeeded tremendously and people even

withdrew their cases from regular courts and settled through Lok Nyayalayas. Becaues of its success in some States, the judges of the regular courts have started referring particularly matrimonial disputes for settlement to Lok Adalats, before they are taken up for regular hearing according to formal procedures. In some instances the settlement reached in Lok Adalat is presented in Court the next day and decrees or orders are obtained from the courts in terms of the settlement. Lok Nyayalayas visiting regularly in given areas through a mobile van is attempted in one or two States.

Thirdly, an innovative experiment in strategic legal aid is the introduction of *Entitlement Centres* in key urban and rural areas. By co-ordinating the rural development work of non political social service agencies and giving legal support to them, CILAS found that the benefits conferred to the poor under law can be made available to them. The poor in certain situations may not have legally articulated rights but may be entitled to legally conferred and officially dispensed welfare benefits. Because of a variety of reasons including iliteracy and disorganized composition of the beneficiaries as well as corruption and lethargy of the officials in charge of the governmental agencies concerned, the benefits may not reach the really deserving poor. The social activitists and village social workers if made aware of such legal benefits and the procedures to secure them can help the poor to assert themselves and seek the benefits. Such programmes if supported with legal interventions wherever necessary can be an effective carrier of the minimum needs and essential services which are legitimately due to the poor and are denied to them by unscrupulous intermediaries. These programmes are called Entitlement Centres where social audit of welfare administration is periodically conducted, lay advocacy for getting that legitimate benefits is encouraged, problems of the poor are articulated and channelised for legal redress and legal support. These centres periodically give training to social workers for para-legal support to the delivery of legal services and to carry legal literacy to the people in village and tribal areas. Furthermore, these centres will disseninate information on legal aid policies and programmes and will form a network of information banks to support legal aid activities including public interest litigation and law reform on behalf of the poor,

A fourth *aspect of the preventive legal* aid is the development of a *cadre of bare-foot lawyers* including women, retired teachers and civil servants, social workers, youth leaders trade union people, etc., who will render first aid in law besides giving para-legal support to legal aid committees. They will help eliminate toutism and exploitation in administration of justice, help organize Legal Aid Camps and Lok Adalats, communicate the law and oversee its implementation on behalf of the poor, mobilize legal action at appropriate levels on community rights and attempt reconciliation of disputes. Standardized law courses for para-legal training at different levels have been developed by the State Legal Aid Boards, CILAS and University departments of law and Adult Education.

Fifthly, preventive legal aid attempts to *involve law students legal aid* activities thereby making legal education socially relevant and attempting to make the profession sensitive to social justice issues and the problems of the poor. CILAS helped to set up a series of law school legal aid clinics involved in socio-legal survey of poverty problems, legal literacy compaigns, legal advice centres and research support cells to promote legislative and litigative action in legally aided cases. Besides, a subject called "Law and Poverty" is developed for law school teaching which gives curricular support to the legal aid clinics. Law School clinics also undertake research in areas of law affecting the poor and hold seminars and conferences to encourage scholarship on poverty jurisprudence.

Finally a key concept in strategic legal aid is the idea of *Public Interest Litigation* or Socian Action Litigation. The dissatisfaction with legal aid on a case by case basis, its inability to reach justice to the silent majority of poor in communities with inadequate resources and the class bias of the established law and its processes in inherited legal systems of Third World Countries led to a great deal of experimentation on the delivery of public legal services and the policies underlying them. Again, where poverty is attempted to be eliminated through economic planning and disbursement of special benefits and entitlements to the weaker sections of people, an over-expanding bureaucracy has come up with enormous powers over the conditions of life of poor people. In the circumstances, it became necessary for the legal process to ensure that administrative decisions are

made according to the intent of welfare laws so that the beneficiaries recieve their entitlements and protections from the State agencies entrusted with welfare administration. Overseeing this area of distributive justice for the poor requires new strategies and approaches unlike the case-by-case, litigation-oriented, traditional legal aid. Representative suits, group action litigation, lay advocacy before administrative official and public interest litigation have been developed in this context. When the poor are given specific protections under law but lack access to the administrative forums in which these are translated into concrete programmes, the protections may become meaningless or they may be cornered by the few powerful to the detriment of the weaker sections. Legality and social justice demand judicial intervention to prevent such perversions in welfare administration. Public Interest Litigation provides one strategy for the courts to correct administrative injustice and promote delivery of social justice.

In India public interest litigation has not yet emerged as the major weapon for socio-legal reform though, since 1980, there has been a serious effort on the part of the Supreme Court to exploit this new type of litigation to serve the cause of equal justice for the poor. In Asian Workers' case, (AIR 1982 S.C. 1473) the Supreme Court itself highlighted the nature and importance of Public Interest Litigation (PIL) in the Indian context in the following words :

"......Public Interest Litigation is a strategic arm of the legal aid movement and is intended to bring justice within the reach of the poor masses. It is a totally different kind of litigation from the ordinary adversary litigation ...... PIL is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation; but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor should not go unnoticed or unredressed. That would be destructive of Rule of Law which forms one of the essential elements of public interest in any democratic form of government ...... PIL, as we conceive it, is essentially a co-operative or collaborative effort on the part of the petitioner, the State or public authority and the Court to secure observance of the

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constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The state or public authority which is arrayed as a respondent in PIL should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or public authority."

The credit for introducing PIL and making the Court accessible to the unorganized, illiterate, poor people of the country goes to few activist judges of the Supreme Court and High Courts who not only broadened the concept of *Locus standi* but also relaxed the formalities of judicial procedures in PIL cases. By expanding the frontiers of fundamental rights by activist interpretation and adopting people-oriented judicial techniques, few judges of the Apex Court brought to limelight the dynamic use of legal aid for socio-economic justice. The right to life and personal liberty was transformed invoking the "due process clause" bringing within it right to free legal aid, right of access to court, right to bail, right to speedy trial, right to treatment with dignity in custodial institutions, the rights to privacy, right against torture, right not to be solitarily confined, right to minimum wages, etc. All these have been accomplished by letters to Supreme Court judges or the Chairman of CILAS written on behalf of the victimised group—bonded labourers, prisoners, inmates or children's institutions, pavement dwellers, etc., by public—spirited lawyers or social workers or law teachers or journalists. Typically there is no active participation by the would be beneficiaries. Sometimes, the court takes the initiative and proceeds on the basis of a newspaper report or letter published in the newspaper on a certain injustice. Again, the Court appoints commissions consisting of members of the public to investigate and enlighten the court of facts alleged in the report or letter. Lawyers are requested by the Court to help the Court in the matter and many of them freely volunteer to assist the Court. Social welfare organizations are involved by the Court in identifying the problem, removing the injustice and preventing recurrence of similar victimisations in future. In the process, judicial remedies unknown to the existing law but appropriate to the situation emerge often with the concurrence of the con-

cerned administrative departments of the Government. (See AIR 1981 S.C. 14; AIR 1983 S.C. 1086)

Of course, the present status of public interest litigation is not free from infirmities. A foreign schoolar who observed the scene writes:

"Public Interest Litigation departs from typical Indian lawyering in its pro-activity and its orientation to large questions of policy, particularly vindication by government of its commitments to welfare and the relief of the oppressed. Although broader in scope than typical legal aid schemes, in crucial ways it replicates the prevailing atomistic style. PIL too is initiated and controlled by elites and is responsive to their sense of priorities. It carries no accountability to a specific client constituency nor does it imply a sustained commitment to such a constituency. Typically, it is an episodic response to a particular outrage. It does not mobilize the victims nor help, them to develop capabilities for sustained effective use of law". (Mare Galanter, New patterns of Legal 'Services in India, in Public Interest Litigation (Mines) R. Dhawan (Ed.) 1982.

The Committee for Implementing Legal Aid Schemes Commissioned a plan for institutionalising public interest litigation as a major strategy of legal aid to the poor. The plan submitted by a law teacher contained the following observations: (R. Dhawan (ed.) mines 1981).

"A legal service programme for PIL should begin from below rather than be engineered from the top. For this it is required to assist social mobilization to find its way against a maze of antagonistic forces including some agencies of the State ......Lawyers are too maldistributed both vertically and geographically to be relied upon as the spearhead of socio-legal mobilization. The essential strength of legal mobilization therefore will stem from voluntary groups......Legal Aid schemes are inadequate to constitute the basic thrust of a strategic legal mobilization movement. Legal aid programme should be expanded to meet some of the demands of public interest litigation. It should fund such litigation...... Attempts at legal mobilization need (a) backward linkages with and in the community they serve, and (b) forward linkages so as to have links, resources capabilities to use law and legal institutions to advantage. Backward linkages include spreading legal literacy, taking up

cases, holding camps, training barefoot lawyers, etc. The forward linkages consist of preparing cases, giving advice, working out a strategy and hiring lawyers to argue the cases."

Of course, PIL has many challenges to face, many questions to answer and many strategies to develop before it can get institutionalized in the judicial process. Yet the idea has come to stay and has an increasing number of enthusiasts not only in the judiciary and in the practising profession but also in voluntary social action groups, the media and even in certain sections of the bureaucracy. The legal aid movement has adopted it as a major programme for delivery of justice to the poor. Social mobilization with the help of voluntary groups is well under way through legal aid camps, para-legal course and seminars and workshops held periodically at different levels. The PIL cases in the High Courts and the Supreme Court have increased from a dozen or so in 1981 to over two thousand in 1986.

Legal Aid in the Context of Higher Education

Having considered the status of legal aid and the range of programmes included in it, one can now assess the scope of involvement of the University Community in implementing legal aid to the poor. University education is often criticised for its relative indifference to social problems and neglect of practical orientation. These drawbacks are nowhere more pronounced than in legal education. The legal aid programmes offer an excellent opportunity for service and education to the law student. In varying degrees they also serve the same purpose to students of other disciplines and professional courses.

In law colleges, legal aid clinic is now recommended by the Bar Council of India which prescribes standards of legal education under the Advocates Act. Besides, the Central Legal Aid Committee (CILAS) has assisted the setting up of legal aid clinics in over 50 law colleges in different parts of the country. College-based clinics not only impart legal literacy to the masses but also give para-legal training to social workers, legal aid staff and others interested in legal aid activities. Further, law

college clinics undertake socio-legal surveys and generate data on poverty related problems for the courts and legislatures to act upon. They do organise legal aid camps and Lok Adalats and render a variety of para-legal services to deliver justice to the needy outside litigation. Several public interest litigations have been initiated by law teachers and students. In many other cases they have been rendering to lawyers and courts supporting research services. Some law colleges keep counselling and advice centres while others even give litigative services. Law reform in favour of the poor can follow as a result of activities of law college legal aid clinics.

Students who have worked in legal aid programmes have found them educationally and professionally very useful. Currently efforts are underway to integrate legal aid experience with the curriculum and make legal education professionally significant.

Another set of University institutions which have involved themselves in a big way in legal aid related activities are the departments of adult and continuing education. Regular legal literacy classes at the undergraduate level and through the students to the local community have become the pattern in many places. Standardized teaching modules and distance education courses are now emerging in this sector of University education. Legal literacy clubs are now becoming popular with teachers and students outside law colleges. In the process Law gets de-mystified and legal services get de-professionalized. Participation of people in justice delivery arrangements get enhanced and the system gets activised at the grass root levels. Legal aid availability gets transmitted and social action for social justice gets slowly strengthened. Youth for social action and social justice is the potential strategy for a better education and an orderly social revolution.

Equally important is the involvement of social work faculty and its students. In fact every discipline and department of higher learning which has a learning to common man's problems and conditions of poverty has to assums proactive or activist role of service throught dissemination of legal knowledge and supporting services. In this effort the concerned educational institutions work in collaboration with law colleges and legal aid boards and committees. The result has been an

increasingly important role for the Universities in community development and social reconstruction for social justice. Youth involvement in this multi-faceted programme of activities can well be channelised by the National Service Scheme which is now an integral part of higher education.

LOK ADALAT: WHAT? WHY? AND HOW?

PROF. N.R. MADHAVA MENON

Since the introduction of Lok Adalat (Lok Nyayalaya) in 1982 as part of the strategy of legal aid, there has been a number of apprehensions, misconceptions and tall claims publicly aired by its protagonists and critics from the legal community as well as from outside.

According to the figures available, in 11 States and Union Territories over 256 Lok Adalats were organized during 1982-86 which settled an impressive list of 1, 21, 286 cases. Gujarat started the scheme in 1982 and Maharasthra and Uttar Pradesh in 1984. All other States and Union Territories started organizing Lok Adalats from 1985 only, probably impressed by its successes in Gujarat which state by 1986 completed over 100 Lok Adalats. Whereas Gujarat in over 100 Lok Adalats spread over four year period (1982-86) settled nearly 19, 094 cases, the State of Uttar Pradesh in just 31 Lok Adalats held during a three year period (1984-86) reportedly settled 57, 863 cases. Rajasthan appears to have outclassed all other States inasmuch as they reportedly settled nearly 63, 559 cases in just about 20 Lok Adalats held over a short span of five months (December 1985 to May 1986).

Lok Adalats caught the attention of the public not so much on the number of cases settled but on the amount of money awarded as compensation in motor accident claims. In fact Lok Adalats on accident claims became so popular with the claimants as well as the insurance companies that there is increasing demand for such specialised Lok Adalats at frequent intervals in every urban centre. During a period of six months (September 1985 to February 1986) in about 36 Lok Adalats held in six

States, nearly 2500 accident claims were settled and a total amount of nearly Rupees five crores was distributed. The All India figure on this count alone will be impressive enough to secure a rightful place for Lok Adalats in the scheme of judicial administration which is now crying for reforms. Here again Rajasthan is in the forefront having disposed of 908 claims and distributed nearly 2 crores of rupees by way of compensation amount. It is no surprise that accident victims mostly from poorer classes take Lok Adalats as a court rendering real justice cheaply and expeditiously.

The above record of achievements need not be taken as an unmixed blessing. In every Lok Adalat there are hundreds of cases which fail to reach any agreement and go back to the regular courts. Interestingly nobody keeps a count on those unsuccessful cases. Again some of the cases apparently settled in Lok Adalats get re-opened and further agitated in courts or other forums. In the absence of any follow-up action, there is no way of assessing the extent of such failures and breakdowns. Knowledgeable people in legal aid circles argue that such failures are negligible and are anyway there even in matters adjudicated through courts.

The initial success of any institution cannot be taken as a guarantee for its continued efficiency unless the concepts are clarified, infra-structure properly developed, personnel trained and minimum standards maintained. More so when it is supposed to substitute the judicial process which should not only be fair and just but should also appear to be so in all situations. Hence the importance of critical appraisal and close monitoring of the institution and its working.

What Lok Adalat is not?

Lok Adalat is not a 'Court' as understood by lawyers though the common people may find attributes of a court in it and may even call it by that name. It is just a forum provided by the people themselves or by interested parties including social activists, legal aiders and public-spirited people belonging to every walk of life. The forum is contrived for enabling the common people to ventilate their grievances against the State agencies or against other citizens and to seek a just settlement if possible. In order to ensure that the settlement is fair and

according to law, the forum may consist of legally trained people who are respected in the community where the Lok Adalat is constituted. Their function is only to enable the parties who voluntarily seek the Adalat's intervention to understand their respective rights and obligations with reference to the dispute brought before it and to help keep the dialogue going in a fair manner. Their role is not to judge the issues thrown up in the discussion nor to give a verdict at the end of it. They are not conciliators or arbitrators in the traditional sense who have powers conferred under different statutes or under mutual agreement between parties. Apart from being 'good samaritan' their role is to clarify the law and by gentle persuasion to convince the parties how they stand to gain by an agreed settlement.

Lok Adalat is not a part of the legal aid bureaucracy nor is it sanctioned under law. Of course, there is no law against it. In fact, all laws and the Constitution demand mutual settlement of disputes which, under any circumstances, is superior to long drawnout, expensive litigation. There are comparable provisions in the Civil Procedure Code, Criminal Procedure Code and in a variety of special and local laws (Family Courts Act, Arbitration Act) which enable the court to attempt settlements and avoid adjudication whenever possible. The rationale behind such provisions is sound experience which tells us that an adversary adjudication ending up in one party declared the victor and the other the ganguished does not remove the dispute from society and may lead to further disputes or social tensions. On the other hand, mutually agreed settlements contribute to greater social solidarity and better cohension among disputants. Perhaps culturally and historically, Indian people are disposed to conciliated settlements with community intervention rather than adjudicated decisions through adversial processes of formal counts.

Lok Adalat is also not a new name for the traditional Nyaya Panchayats though both share many common characteristics.

What is Lok Adalat?

Generally speaking Lok Adalat is a para-judicial institution being developed by the people themselves, still in its infancy, trying to find an appropriate structure and procedure in the struggle of the common people for social justice. It is born out

of a belief that even if State supported programmes of legal aid were able to provide legal assistance to very indigent client (which, of course, is wishful thinking), that is not going to solve the problems of the poor vis a-vis the administration of justice. The poor do not have the staying power which litigation inevitably involves nor can they expect equal justice in all stages of the complicated and technical procedures of the law. Even the not-so-poor find it prudent to invoke informal processes if available to settle their disputes. In other words Lok Adalat phenomenon is an expression of the disgust and disenchantment of the poor and the middle class people in respect of the court system as it functions today.

One may ask that if the above assessment is true, would not Lok Adalats become irrlevant with judicial reforms? One may also doubt whether it is not a compromise on the part of the poor for a system of justice inferior in quality because the superior variety is just not accessible? Others may ask what is the value of a system which does not have the support of State sanction and enforceability through formal legal processes? All these are legitimate questions for which one may find different answers depending upon ones' value premises and one's familiarity otherwise of the formal court system. Even one's concept of justice and the function of law in an unequal society may be open to question if the debate is logically extended. It is, therefore, futile to take positions and argue unless one is sure of what one's brief is and whom to convince about.

Be that as it may. Let us look at the institution as it has developed during the last few years and assess its potential to solve the problems of the poor vis-a-vis the access to justice syndrome. As of today, there is neither uniformity in structure nor in procedure of Lok Adalats being held in different States and Union Territories. Of course, they are sponsored, patronised, financed and guided by legal aid boards and legal aid committees of respective States. In most States, the High Court and the local administration extend facilities and co-operation in different degrees for the success of Lok Adalats. Social action groups, women's organizations, law teachers and students as well as individual lawyers and judges are extending support to the schemes. However, the profession as a whole has not involved itself and some State Governments and High Courts are putting

up a positively hostile attitude towards the implementation of the Lok Adalat idea partly because of ignorance of its nature and implications in relation to their own role perceptions. Despite these inhibiting factors the number of Lok Adalats and their frequency are steadily increasing in Gujarat, Rajasthan, Tamil Nadu, Maharashtra, Uttar Pradesh, Orissa and Haryana. The performance appears to be impressive by all standards particularly in view of the fact that the programme works outside the formal court system without the support of legal sanctions or formal State authority. The extent of legal awareness and social mobilization for legal action generated against class injustices have been welcome fall outs of the Lok Adalat phenomenon. To some extent it also exposed the defects of the formal court system and tended to put it on the defensive before the public. Whether Lok Adalat survies or not, the judicial system can never again remain compliment and alienated if it has to retain its legitimacy and respect.

Composition of Lok Adalat :

Lok Adalat consists not just those few lawyers and judges who have volunteered to act as conciliators or mediators between the disputants who brought their problems to the Adalat. They are, of course, an important segment of what we conceive as Lok Adalat. Being a people's movement the composition should naturally have people (not merely litigants and their witnesses) in every aspect of the Lok Adalat exercise. It includes the hundreds of social workers, legal aiders, law students, village elders and public men who, concerned with social tensions arising from denial of justice and conscious of the limitations of the justice system, mobilise people to agree for fair settlement, educate their respective rights and duties under law, help oranize the forum for discussion and settlement and render para-legal assistance for fair, expeditious settlement if the parties are so disposed. Lok Adalat also includes those judicial officers, advocates of parties, court staff who maintain judicial records and administrative officials of the State Government who give supportive services to process the disputes amicably in respect of matters pertaining to their jurisdiction.

Lok Adalat may even include the social organizations, media, and influential sections of the local populace who, either

because of charitable motives or personal interests show their presence and give varied services including accommodation, food, publicity and credibility to the whole exercise. Even the innocent onlookers of this "Justice mela" ("Festival of Justice") as one newspaper characterised it) are participants of Lok Adalats inasmuch as they carry the message, tend to make use of it when they are in trouble and become critical consumers of the legal system, formal and informal. For many of our citizens blissfully ignorant of the law and judicial proccsses, Lok Adalat operates as an invitation for responsible participation which, indeed, is the essence of democratic government.

In a typical Lok Adalat in Gujarat, Rajasthan, Kerala or elsewhere one finds a couple of thousand people or even more, some with specific grievances, some responding to Lok Adalat summons, some involved in organizational arrangements, some acting as mediators, some rendering para-legal assistance, some supervising and monitoring the operations and some simply trying to figure out what it is all about. All of them constitute the Lok Adalat, a People's court trying to bring people together in resolving their disputes and advancing the cause of social justice and social solidarity through orderly processes—humane, just and consensual. It is not a 'Darbar' of a mughal Emperor or an exhibition of organized power of a State agency or Panchayat under a village chieftain. It is an amorphous crowed of concerned citizens animated by a common desire for justice and willing to experiment with consensual models of dispute resolution in the interest of themselves as well as of the rest of society. The composition is therefore flexible enough to accommodate the needs and circumstances of different situations. Few devoted lawyers/judges and some social workers capable of rendering para-legal services can provide the infrastructure for a modest Lok Adalat in any location.

Organization and Procedure :

As is evident from the above discussion, the organization is and ought to be flexible and informal. Apart from some minimum requirements in respect of procedures and approaches, the rest of the exercise has to be as informal and varied as the nature of the problems and the culture of the community demand. Voluntary participation and honest settlement would

be possible only in free and informal milieu. Further, there can be variation in approaches and procedures depending upon whether the place is urban rural or tribal and whether the disputes pertain to property, personal relations or public administration. Though a Lok Adalat need not be exclusively devoted for one category of disputes, yet in a given Lok Adalat it is advantageous and desirable to have specialised cells dealing with different types of disputes. Therefore, organizationally, for the success of a Lok Adalat it is necessary to have prior data on the nature of the problems likely to come up for resolution, the volume of work in each category and the pattern of responses the Adalat may expect from the people as and when held. This necessitates careful selection of location, field visits, pilot surveys, establishment of relations with key individuals and organizations, mobilisation of local resources, appropriate publicity and involvement of competent and reputed persons in the distpute resolution processes.

There are many ways of organizing these preliminary steps. Usually the initiative comes from a legal aid agency or a law college legal aid clinic or a social action group familiar with legal aid work. The first decision to be made is where to hold the Lok Adalat and for what purposes? Some may want a Lok Adalat for resolution of long pending disputes in Court, and that too, for specialised categories of disputes, matrimonial disputes, landlord-tenant problems, etc. The implications of such a decision are that it ought to be held in a place not far from where the court itself is located so that records are accessible and advocates of parties available. If, on the other hand, the decision is to solicit grievances which have not reached the courts and to prevent possible litigation the Lok Adalat can be in any place where people inhabit. Of course, priorities have to be determined as to who are to be served through the Lok Adalat—the urban middle class, the slum dweller, the agricultural worker, the tribal or the women. These priorities also determine the location and the nature of the Lok Adalat to be organized. This does not mean that a given Lok Adalat is to serve only a particular class of people or category of cases. They are relevant considerations to decide the nature and procedure of the Adalat to be organized, the location in which it is to be held and the type of personnel to be involved as mediators and

conciliators for effective resolution of disputes. There can also be Lok Adalats which in the same meet process pending litigation as well as prelitigation disputes. There can be Adalats which entertain all types of disputes—land, matrimonial, criminal, contractual, administrative, etc.,—whether already in court or outside it. Organizationally all that is required is to know beforehand the nature and dimensions of these varied problems so that the infra-structure mounted could cope up with the situation effectively to the full satisfaction of the ligant public.

As a Lok Adalat cannot be organized by one or two individuals and as it requires the maximum participation of the people amongst whom it is to be held, it is advisable to form several committees with specific tasks months before the actual date of the Adalat. These committees include one for publicity and mobilisation, one for research and para-legal services, one for liasion with courts, government offices and social service organizations, one for finance and accounts and one for reception and organizational arrangements. It is necessary for the research and para-legal services committee to mount a multi-dimensional effort with the help of young advocates, law teachers and law students in surveying the case files and preparing the briefs. in conducting field investigation and gathering data on the pattern problems, in evolving alternate strategies for settlement on the basis of the relevant law if the parties are so disposed, and in conditioning the parties to make use of the Lok Adalat in the spirit in which it is conceived. This committee will on the day of the Lok Adalat provide the supportive services in each cell of the Adalat and, wherever necessary, follow-up the settlements of their natural consequences. It is a sensitive job which requires knowledge of law, patience, tact and understanding. It is this committee which is central to the organization of Lok Adalat and can co-ordinate the activities of other committees. In fact, it is essential that when Lok Adalat is initiated for the first time an orientation programme for a couple of days is conducted by this committee for the benefit of members of all other commitees so that everyone understand the nature and scope of the exercise and will play the role expected of him.

Mobilization of the people can usually be done through voluntary organizations and with he help of grass-root level workers. Radio, Newspapers and T.V. can play the role of

informing people and educating them of its objects and expected services. The local legal aid office can act as the referral agency and secretariat of the Lok Adalat. It can also be a law college clinic or a bar association or a reputed social work agency. It need not be a government department and certainly not an office of a political party. The committee in charge of liaison can operate from the same office and, depending upon the type of problems reported, contact the appropriate office for support in fair settlement either on the day of the Adalat or even before. Invitations, notices to parties, appeal to concerned agencies, etc., can go on behalf of one or other committee which will keep itself posted with the accumulation of work, and the nature of organization required.

It is essential that the lay out and the programme for the Lok Adalat as such are carefully worked out in every detail so that the people visiting the place have no difficulty and they are not exploited by touts and intermediaries who may on that day shift their focus from the court house to the Lok Adalat. The committee for research and para-legal services will have to recruit and train as many number of social workers and law students to look after the reception and registration desk, the distribution of work and despatch of litigations to the appropriate cells the linking up of papers and briefing of mediators (judges) in the Adalats and in looking after the comforts of the people whom they mobilized earlier. Adalats should start handling people's problems at the appointed time and should not delay on account of the so-called ceremonies such a inaugurations by V.I.Ps. and speeches by others. In a Lok Adalat, people are the V.I.Ps. and the lawyers and judges assemble to serve them and learn from several aspects of administration of justice and their impact on the common folk which are ordinarily not available to them in the formal courts.

In terms of procedure in the Lok Adalat, there is no set pattern. It has to be informal, pleasant, and friendly. Everyone will sit around a table in close proximity for efficient transaction of business. The order in which and the approximate time at which each matter will be taken up in a given cell will be notified outside the room in which the cell functions and information regarding it will have been given to the parties and their advocates at the reception/registration counter. Depending upon the

extent of preparatory work already done, the committee can reasonably speculate the time required to settle a matter. If any matter takes usually longer time than anticipated, such cases can be referred to a special team of mediators for intensive work with the parties on specific issues. They can come back to the Lok Adalat after a while and in the meantime the matters listed in the order can be taken up.

When a matter is called, usually the petitioner is asked to state his problem and explain the relief he is asking for. He can be assisted by his lawyer or by the para-legals who researched his case. There is no fixed procedure as in court or need for technicalities, interim orders or adjournments. The mediators freely intervene and ocassionally the opposite party also. The mediators (judges) help clearify issues and formulate the proposition for the opposite party to respond. After hearing both parties during which rancour is avoided and friendliness promoted, the judges articulate the facts which are agreed. They explain the position of law hearing on the point and clarify the doubtsof parties in respect of their mutual rights and duties. At this point some issues resolve themselves. As a concerned citizen and friend, the judges may suggest what they consider as possible causes of action and ask the parties to come out with fair settlements accomodating the just point of view of the opposite side. More often than not, the solution emerges at the instance of the parties and the judge immediately intervenes to put in writing and seek their confirmation. They are told finally that if they consider the settlement as unfair to anyone of them they are free to seek redress in court. If they still stand by their agreed solution it is reduced into a formal statement and signed by the parties and witnesses. The judges need not sign them though they can, if parties so desire. If the relief agreed to can be executed then and there it is done. If it concerns a pending litigation, the agreement is presented to the court where it is pending on the next working day and converted into appropriate judicial orders. There is no stamp paper nor registration though they can be adopted if found necessary.

People assembled at the Lok Adalat are given refreshments and working lunch either by the organizers themselves or by local dignitories or organizations. They are educated of some aspects of the legal process and informed of the availability of

legal aid to help resolve their disputes in future. They are given a feeling that others are concerned with their problems and the law is available to them as much as to any other citizen. At the end of the day many of them become participants in the legal aid movement and some of them turn as active workers for Lok Adalat style of dispute resolution.

Beyond a point the Adalat judges do not push the matter towards settlement let the parties should entertain feelings of coersion and imposition. Nothing is concealed from them nor are they tricked into arrangements which they do not opt for. Some cases therefore do not get settled and parties withdraw with some pleasant comments. The judges tell the parties that if they want to use the forum at any future date they can write to the legal aid agency. The entire transaction is done in the language of the parties and no files are consulted unless required by circumstances. These Adalat judges and the para-legal workers study the briefs before-hand and will have prepared their own notes on the issues, reliefs and strategies for reconciliation. They share the same food and move out as equals and friends. No police is there to control the crowd or intimidate the parties. Advocates do not argue unnecessarily or seek adjournments. Precedents are not cited or objections raised on rules of procedure. The judges are in command though that feeling is not imparted to the parties. No court fee is charged and all secretarial assistance is provided free to the parties. Copies of the agreement duly signed are given to the parties and the legal aid agency which organized the Lok Adalat. Matters which require follow-up in the courts or administrative departments of the government are instructed accordingly and parties who seek legal advice are given adequately. Some specialised Lok Adalats can have the regular courts and tribunals sit during the day either at their respective places or at the site of the Lok Adalat so that the agreements are converted into judicial orders then and there. Sometimes even compensation amount granted is given to the parties on the same day in a formal function there by making the Lok Adalat much sought after by litigants and their lawyers.

Resources wise, Lok Adalats primarily need dedicated men and women who are willing to serve the cause of social justice expecting in return only the gratitude of people in distress.

Finances are required mostly for correspondence, transport, organization, publicity and refreshments. Participants are not paid excepting if required for their conveyance. Usually the refreshments are taken care of by the local administration or voluntary organization. Acoommodation is provided by the village office or the school or the college. Secretarial expenses are looked after by the legal aid agency. In the circumstances an average day-long Lok Adalat can be organized in amodest budget of Rs. 2000/- to Rs. 5000/- Such an Adalat may settle 50 to 100 pending litigations and 200 to 500 legal advice matters and pre-litigation disputes. Of course, the volume of work will depend on a variety of factors of which the man-power availability of the right standard is a crucial factor. Hence the importance of Legal literacy programmes and para-legal training course as pre-requisities in the scheme of legal aid through Lok Adalats.

From the above description of Lok Adalat one can understand that it is not just a dispute resolution forum or a contrievance introduced to reduce court arrears, but a peoples' movement for orderly progress through rule of law and participator self-government in the course of social justice. It has the potential for social re-construction and legal mobilization for social change. It can influence the style of administration of justice and the role of lawyers and judges in it. It can take law closer to the life of the people and reduce disparity between law in the books and law in action. Of course, in wrong hands it has also the potential to undermine stability and respect for the system of justice and to act as yet another forum for exploitation of ignorant and poor masses. It may be used by self-seeking politicians, lawyers and judges to advance their own interests and malign their enemies in the profession It may become another bureaucracy if attempted to be stereotyped and made an appendage of the formal court system. The dangers are infinite and the potentialities are limitless.

The country is fortunate at the moment for three reasons. Firstly right-thinking members of the judiciary including judges of the apex court are sympathetic to the idea of Lok Adalat and extend their support to its implementation. Their association gives credibility and respectability to the institution and keep away exploiters and anti-social elements. Secondly, by and large the people welcomed the idea and are getting involved at all

levels irrespective of whether they know the law or have experience in judicial procedures. They study law, mobilize their fellow citizens, and assert their rights for legal action through Lok Adalats. The profession and the governments have not yet shown hostility to the movement and allowed it to grow side by side with formal adjudication. The media gave a helping hand and the legal aid set up assigned top priority to it. The situation in the country today is therefore favourable to the experimentation with Lok Adalats though one cannot credit that conditions would remain the same for long. Hence the urgent need for institutionalising it by setting guidelines, training personnel, monitoring implementation, correcting distortion and insulating from vested interests and politicians. The tasks are formidable and the challenges varied. Can the legal aid system deliver the goods?

Basic Concepts and Instruments:

These are few aspects of Lok Adalat which need to be standardized though they need not inhibit flexibility and innovativeness in approaches and methods. They are intended to prevent abuse and promote efficiency based on experiences already gained. These aspects can be considered under the following heads:

(a) Sponsoring agency:

Lok Adalats which require some of legal and judicial expertise shall only be organized under the sponsorship of a legal aid agency, a law college or a bar association. Of course, it can be co-sponsored by any number of social action groups and government agencies. In a recent decision (W.P. No. 463 of 1986; Centre for Legal Research and Another vs. State of Kerala, dated 2-5-1986) the Supreme Court reiterated the absolute necessity for involvement of voluntary organization in the legal aid delivery systems. The Court, however, cautioned that, "...... the State cannot be asked to encourage and support any and every voluntary organization or social action group......because the possibility of abuse of such encouragement or support cannot be ruled out. It is, therefore, necessary to lay down norms which should guide the State in lending its encouragement and support to voluntary organizations and social action groups in operating legal aid programmes and organizing legal aid camps and Lok Adalats." Directing the State to extend support to

voluntary agencies and social action groups in organizing legal aid and Lok Adalats as per the obligation under Article 39-A, Bhagawati C.J. set forth the following norms to distinguish bonafide organization for the purpose :

"(1) Voluntary organizations and social action groups which are recognized by the Committee for implementing Legal Aid Schemes of the Government of India or whose programme or programmes are supported by way of grant or otherwise by the Government of India or the State Government or the Committee for Implementing Legal Aid Schemes or the State Legal Aid Boards;

(2) Voluntary organizations and social action groups which organize legal aid camps or Lok Adalats in conjunction with or with the support of the Committee for Implementing Legal Aid Schemes or the State Legal Aid Board;

(3) Voluntary organizations and social action groups which are recognized by the State Government or the State Legal Aid Board on an application being made in that behalf."

The essence of the Supreme Court observations is not to bring voluntary organizations and social action groups in the control or under the supervision of the State Governments or the State Legal Aid Boards but to ensure that the processes of justice are not tainted by partisan and extraneous influences. In fact, the Court did say in the judgement itself that "voluntary organization operating these programmes should be totally free from any Government control." The need for recognition or holding Adalats in conjunction with CILAS or State Legal Aid Boards arises from the necessity for ensuring standards of fairness and preventing abuses by vested interests.

(B) **Personnel :**

The Lok Adalat judges are ordinarily to be drawn from retired judges, public spirited lawyers, and law teachers. They are to be selected on the basis of their reputation in the community, professional integrity and aptitude for social work. As

the concept is new and the task different from what they faced in the formal courts, it is necessary to acquaint them with the object and methods of Lok Adalats and the programme of strategic legal aid. Though they are not to be paid any honorarium they may be provided with conveyance and necessary hospitality. It would be advisable for the Legal Aid Board to draw up panels for each district in consultation with the High Court and District Court judges as well as bar associations. Lok Adalats organized in the district may invite the required number of judges (mediators) from amongst those in the panel.

Apart from the judges, the key personnel for the Lok Adalat include the para-legals, the social activists, the local administration officials and members of the bar and the bench. They should all be briefed on the objects and methods of the Lok Adalat so that they get interested in its work and contribute to its success. The role of law teachers and law students should particularly be emphasized as they are eminently suited to undertake the preparatory survey and research and to extend supportive services in its efficient execution. Key officials of the local administration and opinion leaders of the locality should be given the importance and they may be associated with the initial ceremonies and supervisory functions. A close watch has to be maintained on anti-social elements throughout the conduct of Lok Adalat. As sitting judges are likely to be associated unofficially with the programme, it is desirable to avoid the involvement of political parties and party leaders except perhaps in the inaugural and valedictory fuctions.

(C) Procedure :

Though the procedure in the Lok Adalat has to be informal, flexible and non-adverial, it has to have some degree of unformity in approach and methods in order to ensure minimum standards of fairness and justice. This is the reasons why the association of Legal Aid Boards is insisted upon whenever voluntary agencies and social action groups embark upon holding the Lok Adalats. Of course, if the Adalat is to take up pending cases, the involvement of not only the Boards but also the High Courts and subordinate Courts is essential at least in order to ensure availability of Court records. Even in the matter of disputes which have not yet reached the Courts, the Adalats

will be well advised to involve the Legal Aid Boards and Bar Associations in the conduct of Lok Adalats.

The success of Lok Adalats depends on the research and spade work done by the volunteers prior to the sitting of the Adalat. These task include choice of location, selection of Adalat judges and supporting volunteers (Para-legal workers), collection of data on problems (in the community) and cases (pending in local courts) through surveys and field visits, developing contacts with the local administration, public men and social activists, preparation of briefs on cases to be taken up in the Adalat, publicity and mobilisation of parties and their advocates, assessment of claims and motivation of parties for reasonable adjustments, settling organizational details, co-ordinating the work through Committees and evolving the strategy for monitoring and follow-up action. All these steps are required whether it is a Lok Adalat for pending litigation or for pre-litigation disputes or for both. Obviously these exercises require not only some degree of legal expertise and social work experience but team work amongst professionals and non-professionals. Since a variety of para-professional services have to be undertaken by the non-professionals and the scope of Lok Adalat is not yet clearly understood by all, it is advantageous to arrange a series of meetings to clarify the scope, identify the rules, perceive the limits and pitfalls and to maximise the out come not only in terms of dispute settlements but also in respect of legal literacy and social mobilisation for legal action. This phase of meetings may be styled as an orientation programme in which lawyers with legal aid and Lok Adalat experience will speak with reference to the law applicable, the possibie difficulties and handicaps in attempting settlements and the methods and approches recommended in encouraging them. The Lok Adalat judges as far as possible should be invited to attend the orientation programme and their advice solicited in respect of pre-Adalat work and organizational arrangements. In designing the various steps it has to be remembered that Lok Adalats are not intended to replace the existing adjudicatory system through courts but to supplement it by providing an alternate cheap and expeditious forum for litigants to get their legitimate due. It is purely voluntary and that is at once its strength and weakness.

When Lok Adalats become more popular and are clearly

understood by the people, it may be necessary to give it some statutory authority including power to summon parties, witnesses and documents. Some State Governments are reportedly attempting to do this by suitable amendments to the Civil Procedure Code and the Criminal Procedure Code. Some others are suggesting amendments to the Civil Procedure Code and the Arbitration Act (Section 21) whereby courts are given the discretion to refer any of the disputes of particutar discretion for compulsory conciliation or arbitration. This would, of course, require the easy availability and arbitrators who can act the way Lok Adalats perform now.

The proposed National Legal Aid Bill is to give the necessary guidelines for institutionalising Lok Adalats with statutory support. Meanwhile the experiment now under way in Bombay and Delhi in respect of Matrimonial disputes needs careful consideration. According to information available, the 'matrimonial disputes Cell' set up as part of the legal aid programme in S.N.D.T. University, Bombay has a working arrangement with the City Civil Courts under which every matrimonial litigation filed in any one of Bombay's Civil Courts will get referred to the Cell for a possible reconciliation through legal advice and counselling. Expert councellors and legal aid workers try to settle between estranged couples in several sittings over a period of time during which the court proceedings will remain suspended. If it succeeds the matter is reported to the court which gives appropriate judical orders to close the matter. A similar effort is now under way in Delhi through cooperative action of several women's organizations in the capital and the Delhi Legal Aid and Adivice Board.

Some issues of procedure have already led to controversies within the judiciary, the profession and the government. The question of Government involvement arose with the orders issued by the Kerala Government directing its district offiicials to keep away from the Lok Adalats organized by voluntary agencies involved in legal aid. The order was challenged in the Supreme Court in Centre for Legal Research vs. State of Kerala (W.P. No. 483 of 1986 decided on 2-5-86) in which the court directed the State Government to support such legal aid programmes in view of its obligations under Article 39-A and evolved some guidelines in this regard. The resistance on the

part of a section of the judiciary emerged when some High Courts refused to consider the involvement of subordinate judiciary in Legal aid camps/Lok Adalats as part of their official duties and also declined to allow certain courts/tribunals to sit at the venue of Lok Adalat. One would expect that after the resolution adopted at the Chief Justices' Conference in Delhi earlier this year, the High Courts will be morally committed to encorage the holding of Lok Adalats in which the subordinate judicary will be involved to the extent possible. In view of the determined stand taken by the Chief Justice of India on the question of Lok Adalats, it is bound to be faurable in future.

The involvement of the profession in this programme is still uncertain. Invariably in all Lok Adalats so far held, advocates did appear in many cases on the side of their clients. Senior advocates did lend their services as Adalat judges. Nevertheless the Bar as a whole has been rather skeptical and in some places contemptuous towards the whole idea. One of the possible reasons for the skepticism arose out of the unsatisfactory arrangement for realisation of lawyer's fees in respect of cases settled through Lok Adalats. In motor accident compensation cases certain lawyers reportedly used to collect upto 30 per cent of the compensation amount which apparently was not possible in Lok Adalat settlements. Even for the recovery of their fees perhaps lawyers had to wait for long and pursue their clients unlike the case in court proceedings. It needs to be examined whether Lok Adalats can make orders in respect of lawyer's fees as and when it gets statutory authority in future.

There is need also to prescribed the duties and qualifications for the conciliators (judges) as the role is difficult to be performed by every lawyer, retired judge or law teacher. More than professional qualifications, what is required of them is aptitude and understanding. Till such time panels are prepared of expert persons, it may be necessary to have orientation programmes for those volunteering lawyers, judgee and law teachers including simulated practical exercises at conciliation of different types of disputes. A code of conduct also needs to be evolved to maintain professional integrity and privileged communications.

Finally the procedures evolved for Lok Adalat must include necessary steps for follow-up action wherever required including legal advice and litigational aid.

(D) **Finance :**

Ordinarily funding for Lok Adalats must come from the Legal Aid Schemes of the Central or State Governments. The Committee for Implementing Legal Aid Schemes gives liberal grants to State Legal Aid Board and voluntary agencies working in Legal Aid for holding Lok Adalats. According to the norms set by CILAS, an average legal aid camp/Lok Adalat does not require more than Rs. 3,500/- which includes. However, publicity, organizational expenses and refreshments. in practice it is found that many Lok Adalats spend more money in food and organization which the sponsores generate from local sources. Perhaps it is a good idea to prescribe a nominal fee for registration of disputes with Lok Adalat not so much to raise money for the expenses but to prevent fictitious claims and to give respectability among certain sections of the public. In any ostentation is to be avoided and austerity to be followed if Lok Adalats are to achieve the goal of social justice. Proper accounting and strict financial discipline is part of the culture of legal aid delivery and they must be ensured in Lok Adalats.

(E) **Rewards :**

In special work it is wrong to talk about rewards. Nevertheless for the scheme to succeed as part of the overall scheme of legal aid it is imperative that proper rewards are instituted to maintain standcrds and encourage wider participation. Lawyers may be rewarded by way of recognition of Lok Adalat services in judical appointments and judges must receive commendations for good work done. Social workers, law teachers, law students and others may be suitably honoured by higher authorities and public organizations like Municipalites and *Panchayats. Lok Adalat and Judicial Justice* :

At a time when the country is in search of suitable reforms in Judicial administration and better access to justice for the common people, the advent of Lok Adalat is indeed a welcome development. It is, however, not entirely a success story. The movement is still concentrated in a few States and is heavily dependent upen some key individuals at the helm of the judiciary. The people have received benefits out of it without realising the nature and status of the institution and not bother-

ing to know how their role is strengthening it. The popular image of law, lawers and courts does influence their view of Lok Adalats as well. The legal profession on the other hand has not taken kindly to this alternate mechanism which demands radical changes in the style of advocates. Social activists and voluntary organizations are enthused by the prospects of quick results though unable to comprehend the limits and limitations of Lok Adalats. It is the legal aid machinery including some voluntary groups and the judiciary which sustains the Lok Adalat experiment today. If it has to be successful in the long run Governments will have to come out with appropriate funds and infra-structure fairly soon. Judiciary has to spell out guidelines to maintain standards and reckon with Lok Adalat settlements in judicial procedures. Public has to be educated on the role and usefulness of the institution and the profession should come forward to discharge its responsibilites to the community. All these responses demand statesmanship and understanding from the Juidiciary, Executive and Legislature at all levels.

Judicial Justice is much despised because of the cost, delay and technicality. Its relevance to small disputes of the small man is increasingly in doubt. Conciliation in some form or the other existed in all societies and continues to exercise decisive influence in the life or village people even today. Should not the legal system allow access to justice for these poor and neglected sections by institutionalising the new mechanism shaped in the old model of community justice? The challenge for judicial reformers and legal aiders today is to adopt this participatory and conciliatory device to the standards of justice accepted under the laws and the constitution.

COLLEGE-BASED AND COMMUNITY-BASED LEGAL LITERACY PROGRAMME

INTRODUCTION

The role of non-political social action groups is rightly beginning to receive greater recognition in the area of reducing socio-economic inequalities in India. Such a role has varied from (i) promoting development awareness among the people, (ii) imparting skills in development tasks for facilitating people's participation in the process of planned development, and (iii) undertaking action research based on identified problems of a given area. Universities in India are ideally situated to undertake such efforts particularly with the acceptance of 'Extension' as the third yet equally important function of the system of Higher Education. The Policy Frame on Higher Education adopted by the University Grants Commission and later operationalized through various schemes has made 'Extension' a well accepted concern. Among the three roles listed above, most Universities have so far undertaken substantial action in the first two areas—promotion of development awareness, and skills training in development tasks. However, some institutions are beginning to grapple with the requirements of area-based action research projects. Law, Legal Literacy or Legal Service is one area where these three roles can be readily concretised.

The traditional legal aid programmes made demands on the individual in terms of certain capabilities: that the problem can be solved through the application of law and that it required an intermediary in the form of a lawyer or a legal agency. The first demand presupposes a measure of awareness and the second resources in terms of education, time and money. Awareness by itself results in greater inculcation of organised behaviour among

the people. Education as part of this traditional legal service programme would probably enable the poor person to bridge the value-based gap between the elitist professionals and the ethos of poverty. Other social and economic inequalities make it virtually impossible for the poor to seek redressal of their problems through the process of law. Justice P.N. Bhagwati has, on several occasions, stated this point in detail:

> "What we really need is a legal service programme which is designed to change instead of merely uphold existing law and social structures and particularly the distribution of power within society, because these are the factors which effectively prevent the poor from fully sharing the processes and benefits of development. Poverty is the result of our socio-economic institutions, and since law plays a vital part in creating, preserving and protecting these institutions and facilitating their activities, any legal service programme which merely seeks to help the poor individual cases within the existing framework of the legal system and which does not aim at restructuring the society and reconstructing its socio-economic institutions with a view to eliminating the causes which preserve and perpetuate poverty, involves only symptomatic treatment of the disease of poverty and cannot by its very nature be adequate to combat poverty and make the poor effective participants in the developmental process".

The new legal service programme in India is based on:

(i) Socio-legal investigations seeking to identify instances of injustice—violation of basic human rights, denial of social and economic entitlements, detrimental effects on the poor of the policies and programmes of the government, factors and forces allocation decisions in their favour, etc.

(ii) Education of the poor and the disadvantaged aimed at promoting group consciousness, group dialogue and group action by converting information and favoured interpretation of law;

(iii) Self organisation and mobilisation by and among the poor to enable them to act on behalf of their own interest, individually as well as collectively;

(iv) Training of para-legal workers with a view to providing cadres of workers of social action groups; and

(v) Social action litigation for the benefit of the poor.

OBJECTIVES :

The Legal Literacy Project for the College youth and weaker sections in the community has the following objectives:—

(i) to promote an awareness about the relationship between law and a just and equitable development of the people;

(ii) to impart knowledge about the legal frame-work in India and the manner in which it regulates individual/ social behaviour;

(iii) to familarise the target population with procedures relating to the application of law in matters connected with a just and equitable development of the people; and

(iv) to promote a greater inculcation of law-abiding and law-enforcing behaviours among the participants.

We would generally find two kinds of College contexts. The programme content for the two groups of target population comprises of the following:—

Youth in Women Colleges;

Constitution of India

Division of powers
Law making process
Judicial system
Fundamental rights and duties

Criminal Justice System in India

Select offences affecting women
Criminal Procedure with emphasis on Investigation and prosecution
Criminal evidence
Sentencing and status of prisoners
Human rights in criminal justice.

Matrimonial Rights

Marriage
Judicial separation and divorce
Custody of children
Maintenance
Property Rights.

Laws Relating to Employment

Contract of Employment
Security and Termination of Services
Labour Court and Procedures
Special legislation regulating women's employment.

Laws Relating to Contract

Special contract like Insurance, Agency, Negotiable Instruments and Bailments
Contractual remedies, consumer protection laws, and, Goverment contracts.

Evidence

Role of Evidence law in judicial procedure
Relevancy and Admissibility
Types of evidence and their probation value
Characteristics of evidence in criminal proceedings.

College Youth in Co-educational Institutions:

The Indian Legal System

Law	—	Codified and Customary; Central and State; Substantive and Procedural
Courts	—	Union and States Judiciary—Judicial Review of legislation.
Legal Personnel	—	Lawyers and Judges.

The Constitution of India

Structure	—	Union of States Parliamentary Model.
Fundamental Rights	—	Directive Principles of State Policy.

Criminal Law and Administration

Crime against Person, Body, Property etc.

Police powers of Investigation and Citizen's rights
Criminal Trial
Punishments.

Employment Laws

Constitutional Provisions of non-discrimination.
Settlement of Labour Disputes
Social Security and Welfare Rights of Workers.

Family Laws

Marriage, Divoce, Maintenance and Custody
Inheritance and Succession.

Laws of Commerce and Personal Injuries

Contract law and enforcement
Tort Law and remedies
Commercial Transactions
Consumer Protection.

Legal Remedies and Their Enforcement Through Courts

Types of remedies and procedures
Legal Aid to the Poor.

Community based

The content of the community-based programme comprises of :—
Atrocities against Women: Dowry, Rape, Eve-Teasing.
Sexual Harrassment; Laws relating to Employment:
Equal wage for Equal work, Wealth facilities,
Working hours, Labour laws, Accidents
Laws Protecting Social Status: Appearance at Police Station, Untouchability, Obscenity;
Evidence: Problem Entitlements in relation to Education, Health, essential services and Information.
Matrimonial Laws.

The methodology visualized for the project includes setting up a Legal literacy club with a Teacher-in-charge and identify student members for the Club. The legal literacy club should have as far as possible a minimum of 50 members who in turn should elect amongst themselves President, Vice-President, Secretary, Joint Secretary and Community Organiser. The Club member would be given certificates at

the end of the year subject to a minimum participation of job in the activities. The activities of the Legal Literacy Club would involve:—

(a) Six lectures-cum-discussion sessions.
(b) One College Camp—2 days.
(c) One Community Camp—2 days
(d) Survey Project
(e) One opinion seeking session open to all in the College on such issues as :

Dowry System and Law
Preventive and remedial steps-law and procedure—Discussion on two cases one ending in conviction and other in acquittal.
Civil Disobedience, Democracy and Law
Limits of freedom-Order and Progress, Power and Privilege
Rights and Duties.
Fundamental Duties and Enforcement
Rights of Children, Old People, Insane and Mentally Handicapped.
Terrorism and the Law
Women in Employment
Police and the Citizens
Independence of Judiciary
Natural Justice
Social Justice—Legal Aid, Public Interest Litigation.

Impact and Directions for Future Work

The spread of legal lIteracy among College youth and in the weaker sections of the community would promote an interaction between the legal experts and those would ordinarily be the beneficiaries of law and its proper administration. This interaction would seek to dispel the belief that law and its administration are incomprehensible to the common man. The wide range of laws, rules and procedures when simplified to the level of the common man open up new vistas of understanding and faith in the democratic process as one effective means of responding to people's developmental aspirations. The effort would create interactional opportunities wherein the members from the weaker sections of society, who are usually, considered to be the steeply immersed in the culture of silence, have

begun to raise questions largely aimed at relating their life conditions to the angularities of law and justice. While the legal literacy programme would be very beneficial to weaker sections of society, it would also help expose the socio-economic and cultural inadequacies of law and the legal profession. It would highlight the irrelevance of existing legal institutional structure; this is in consonance with the legal Aid strategies being advocated by Chief Justice P.N. Bhagwati in the form of legal literacy, Public Interest litigation, Lok Adalat, reforms in legal administration, etc. From lectures to lecture-cum-discussion to Audio-visual presentation-cum-discussion, the need has now been felt to go in for legal literacy camps and Referral-cum-counselling Centres.

The legal literacy programme for college youth would prove equally useful in so far it has provided a learning opportunity to the young people. The effort is not just an acquaintance with various laws, but with the entire complexity of the Indian socio-economic and cultural situation. The youth would respond to the programme; many have expressed the desire to do more systematic work in the area. It has been felt that training of para-legal workers would prove to be helpful in creating a cadre from among the young people.

A third segment of population would also interact with the legal literacy project; this group constitutes the law educators. This group of professionals provide support to both the college-based and the community-based legal literacy efforts in the role of resource persons; the interaction generated in the process has helped them to raise many socio-economic and cultural questions within the domain of legal educations. It is difficult to say whether this effort could be considered to have contributed to the socialization of law educators; however, a critical look at legal education is fast becoming an increasingly relevant subject.

A DRAFT SCHEME FOR LEGAL LITERACY

WHY?

Every single instance of illiteracy is a human tragedy. This was said by Dr. Zakir Hussain in 1967 on the International Literacy Day. In this country where 440 million people are illiterate, the tragedy is catastrophic.

An illiterate cannot help in the development of his country nor can he effectively participate in social or political processes. A nation with 63.7% of its population unlettered is poorer to that extent in effective human resources. Illiteracy is a national tragedy. Legal Literacy is much more scarce. The system of education has totally ignored information about basic laws. One can learn about laws only in professional law classes though the basic knowledge of law is essential for every good citizen.

Laws are the rules of expected behaviour. To maintain harmony and order in a society it is necessary to have rules. But it is equally essential that the people who conduct these rules seek to regulate, know about the rules so that they conduct themselves accordingly. In absence of such knowledge the laws act as mere traps even for a well meaning citizen.

A number of laws have been made to protect the interest of weaker sections. The intended beneficiaries usually do not know about these laws. They are innocent of their rights so created and therefore, do not react against the infringements. The laws remain sheer legislative exercises in futility. The laws cannot be successfully implemented unless people know about them and can use the legal mechanism to enforce them. Even if legal aid and advice is made available to the poor, it may overcome only some handicaps. A person will approach legal aiders and seek their help only if he is conscious of the infringement of his

legal rights and wants to assert it. Such awareness and assertiveness is a precondition to any legal aid programme being given a felt need.

Rule of law practically becomes rule of the persons who can operate the legal mechanism when a majority of people are sans of any information regarding the operation of the justice system. Rule and law has become only an academic cliche to be repeated in learned discourses and seminars. Law can rule the people only when they are conscientized to the legal rights and obligation and have wherewithal moral, informational and material, to use the redressal mechanism.

Strategy

If any legal system is to work evenly, every citizen should be aware of his rights, entitlements and obligations and be in a position to assert his right. Every functionary of the system should also be aware of the rights and entitlements'of the people and should be responsive to their problems. Developing this awareness, assertiveness, and responsiveness would be the object of the legal literacy programme. Of six hundred and eighty four million men and women in this country only a very small number of persons are already aware of the laws. Even if the persons who can easily afford to purchase legal know-how, are also, discounted it will still mean conscientization of about five hundred million persons. This by any measure, is a colossal task.

Any programme to communicate directly to these numbers within a reasonable time will not be possible. The only viable alternative is to train a cadre of legal educators by the agencies at the state/district level with an active collaboration between Departments of Adult, Continuing Education and Extension and Faculties/Colleges of Law with the help of local resource personnel, if available. These legal educators can then spread legal literacy amongst the people. This is the only way to reach out to the people and conscientize them within a reasonable period of time.

The primary strategy of legal literacy should, therefore, be to have expert training teams in each state/district. They should also identify resource personnel having requisite expertise in law, entitlement programmes and communication, in every district. The first stage transference of information and skill

should take place by training legal educators coming from different parts of the State. They should be trained in relevant law and programmes. They should also have a reinforcement programme and subsequent continuing communication to them about any new law or change in laws or programmes. The legal educators will then conduct programmes for the primary consumers to make them aware of the laws and programmes relevant to them.

In addition to the general awareness programmes, programmes on certain specific subjects relevant to specific social and economic groups may also be conducted. Such programmes can be conducted for women, Harijans, bonded labourers, Industrial labourers, etc.

Assertiveness is more easily induced in young people than later when they develop more 'tolerance' to the deprivations. Awareness of rights and entitlements is necessary not only for the persons who have the rights but also for the persons who have to make them available. They should also be aware of the rights and entitlements of others so that their ignorance is not responsible for non-availability of the rights. The functionaries at the grass root level in organisations dealing with the people are either elected or are Government employees.

The pradhans of Gram Sabhas, panchas, Block Pramukhs, etc. have important executive and Judicial functions to perform. It is not unoften that they are iiliterate or semi-literate, and seldom that they are educated to a level where they understand the concerned rights and entitlements of the people and their own role in making them obtainable. They are usually innocent of the laws which they are elected to operate. There is not regular training programme for them.

Materials

Legal Literacy to the educated persons can be imparted by making available books containing information about laws and programmes. This will supplement the class-room literacy programmes for the books containing laws programmes and procedures in simple non-technical language will have to be structured.

Materials will also have to be prepared for the legal educators, for reference, and for primary consumers. The legal educa-

tors shall have to be kept informed about new laws and programmes or any change in law and also of the techniques of effective communication as may be developed from time to time. A periodical will have to take care of this communication. Training materials shall also have to be developed to help the educators explain the legal provisions and to promote legal literacy.

Data Collection/Analysis Training

Another important task to make the legal literacy programme functional, relevant and effective, will be to collect information and to analyse it. The problems of primary consumers and information about their social and economic activities will have to be gathered. Only the laws and programmes relevant to their problems should be communicated to any group of primary consumers.

It is also necessary to evaluate the impact of programmes and to make them effective. The information gathered will have to be analysed.

Data collection can also be used as a tool for sensitisation.

Another function of this wing of programme would be to find effective mode of communication by research and development, and to monitor the work of the legal educators.

It will also be necessary to evaluate it and to make it more effective. The research cell can look after all these functions.

It will also be necessary to impart training to the members of the State Training Teams.

Programme	*Participants*	*Objective*	*Resource Personnel*
1	*2*	*3*	*4*
1. Legal educators (Primary training)	Legal educators (to be chosen from (a) Adult Educators (b) School Teachers (c) V.L.W.Gram Sewak/ADOs etc. (d) Social Workers)	To inculcate 1. Ability to identify legal/entitlement problems 2. ability to identify redressal mechanism and manner of approaching it. 3. ability to lodge reports and furnish information. 4. ability to communicate. 5. ability to solve simple problems. 6. ability to write simple documents.	1. Local resource personnel 2. State Training teams.

2.	Legal educators Reinforcement programmes	Legal educators (who have undergone primary training)	1. To fill gaps in above. 2. Awareness about new laws/change in laws/ programmes. 3. To raise the level of awareness/expertise. 4. Sharpening the tools of communication.	
3.	Theme Programmes	Social/economic groups.	Inform them about laws/ programmes relevant to the target group.	Legal Educators/ State Training teams in collaboration with relevant agencies.
4.	General legal awareness programmes	Primary consumers	To inculcate 1. ability to identify legal/ entitlement problems. 2. ability to identify redressal mechanism & manner of approaching it. 3. ability to lodge reports & furnish information,	1. Legal Educators 2. Legal resource personnel.

1	2	3	4
5. Legal awareness/ sensitization of Youth.	Students Youth Groups.	1. To make them aware of important social economic and regulatory laws. 2. To sensitise the young persons to the problems of the weaker sections.	State Training teams/Local Resource Personnel (Socio-economic data collection as in 10).
6. Legal awareness (for specific jobs)	Elected Representatives at Block/ Village level (Pradhans/ Pramukhs Panches).	1. To acquaint them of the laws relevant to the jobs.	State Training teams/Local officers.
7. Sensitization Training.	Grass root level officials (Policemen Revenue officials, Development officials etc.).	1. To sensitise them to the problems of weaker sections specially in relation to the job of the target group. 2. To acquaint them of their role in implementation of social/ economic laws and programmes.	State Training teams in collaboration with relevant training institute.

8. Leadership programmes.	Persons chosen from amongst social/ economic groups.	1. To inculcate awareness about the problems of the group. 2. To develop leadership qualities so that they can be effective spokes-men of the group. 3. To inculcate awareness about the relevant laws/ programmes and procedures.	As above.
9. Material building (1) Primary Consumer. (2) Legal Educators primers. (3) Legal Educators Intermediate. (4) Social/Economic groups. (5) General legal awareness books for literates. (6) Periodicals for legal educators/State teams.		To prepare material to inculcate awareness, training material and resource books for legal educators, posters, audio-visual etc , for the primary consumers. To prepare material for educating educated persons about laws.	State/Central material Prepara-tion Cells, in collaboration with adult education, and mass commu-nication agencies.

	1	2	3	4
10.	Data collection/ Analysis.		1. To collect data to structure/evaluate programmes. 2. To sensitise the youth/ trainees to the problems of weaker section.	State planning and Analysis cell in collaboration with. (a) Students/N.S.S. (b) Trainees. (c) Social action groups. (d) Labour/Women Organizations.
11.	Trainers training Programmes.	Members of State Training teams.	To acquaint them of training methods communication techniques.	Training Experts.

Addresses of the State Legal Aid and Advice Board set up in Accordance with the Model Scheme Evolved by the Committee for Implementing Legal Aid Schemes

State Legal Aid and Advice Boards

Administrative Officer,
A.P. State Legal & Advice Board,
High Court of Andhra Pradesh,
Hyderabad-500066.

Special Officer and Secretary,
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High Court of Gujarat, Navrangpura,
Ahmedabad.

Advocate General & Member Secretary,
Haryana State Legal Aid and Advice Board,
High Court Building,
Chandigarh.

Convenor,
Himachal Pradesh State Legal Aid Board,
Shimla-2.

Member Secretary,
Karnataka State Legal Aid & Advice Board,
Technical Education Building,
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Member Secretary,
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(Law and Judiciary Department) Mantralaya,
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Ex. Secretary,
Legal Aid and Advice Board,
and Secretary (Law),
Government of Meghalaya,
Shillong.

Member Secretary,
Tamil Nadu State Legal Aid and Advice Board,
High Court Building,
Madras.

Member Secretary,
Uttar Pradesh Legal Aid and Advice Board,
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Deputy Secretary,
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District Judge and Chairman,
District Legal Aid Committee,
Chittorgarh, Rajasthan.

Member Secretary,
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T.C. 14/460, Thennala House,
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Trivandrum-33.

Secretary,
Law (Legal Aid) Department,
Secretariate, Patna.

Legal Remembrancer and Director,
Prosecution and Litigation and Secretary to the Government of Punjab (Legal Aid Branch),
Kothi No. 1084, Sector No. 8-C,
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Office of the Executive Chairman,
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Judge, Rajasthan State Legal Aid and Advice Board,
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Secretary,
M.P. Legal Aid and Advice Board,
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