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A LECTURE ON LEGAL AID, LEGAL LITERACY AND LOK ADALATS

By

—Hon'ble Sri Justice P.S. NARAYANA,
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"Legal aid" says *Brain Harris* in his "Legal Aid and Advice"

> "consists of representation in Court and advice on the preparation of the case and it also gives the solicitor authority at his discretion to give advice on whether there appear to be reasonable grounds of appeal as well as assistance in the preparation of a notice of appeal or in making an application for a case to be stated."

The Legal Aid Movement in our country, by and large has been well influenced by developments in western countries in general and England in particular. The Committee for Legal Aid and Legal Advice was first constituted in Bombay in 1949 and the recommendations of this Committee were more or less akin to those made by *Rushciffe's* Committee. Likewise in 1949 the Government of West Bengal also had appointed a similar Committee. Law Commission XIV Report, 1958 made several recommendations by devoting a Chapter to the concept of Legal Aid. Mr. *Madhu Lumaye*, a Member of Parliament introduced a bill "The Free Legal Aid Bill" on 13-3-1970 in Parliament. Justice *P.N. Bhagwati* when he was Chief Justice of Gujarat High Court, as Chairman of the Committee observed :

"that an effective legal assistance programme is not only essential to the maintenance of the democratic way of life and the rule of law but also in a poor country like ours a socio-economic necessity."

Government of Madhya Pradesh also appointed a Committee on Legal Aid and Advice in 1973. Likewise, Rajasthan also appointed a Committee "Law Reform and Legal Services Committee".

"I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men's hearts I realised that the true function of a lawyer was to unite parties given as under. The lesson was so indelibly burnt into me that large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases" said *Mahatma Gandhiji*.

The preamble of the Legal Services Authority Act, 1987, Act 39 of 1987, hereinafter referred to as "Act" in short, specifies that it is an Act to constitute legal services to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

Section 3 of the Act deals with constitution of National Legal Service Authority, Section 3-A — Supreme Court Legal Services Committee, Section 4 — Functions of the Central Authority, Section 6 — Constitution of State Legal Services Authority, Section 7 — Functions of the State Authority, Section 8-A — High Court

Legal Services Committee, Section 9 — District Legal Services Authority, Section 10 — Functions of District Authority, Section 11-A — Taluk Legal Services Committee, Section 11-B — Functions of Taluk Legal Services Committee. Section 12 of the Act deals with entitlement to legal services criteria for giving legal services. Section 13 — Entitlement to legal services, Section 15 — National Legal Aid Fund, Section 16 — State Legal Aid Fund and Section 17 — District Legal Aid Fund.

It may be relevant to mention here itself that the statement of Objects and Reasons of Act 39 of 1987 commence stating "Article 39-A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide for 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 reasons of economic or other disabilities".

In *Mansukhlal Vithal Das Chauhan v. State of Gujarat*, (1977) 7 SCC 622, the Apex Court observed that the right to legal aid and speedy trial are implicit in Article 21 of the Constitution of India. In *Kedrra Pehadiya v. State of Bihar*, 1981 BLJ 190 (SC), it was held that the Magistrates and Sessions Judges are 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 service at the cost of the State. Right to free legal services to poor is well recognised as a constitutional obligation on the part of the State. *Khatri v. State of Bihar*, 1981 Crl.LJ 470, *Hussainara Khatoon v. State of Bihar*, 1979 (3) SCR 532. See also AIR 1990 SC 2145, AIR 1986 SC 1322.

In *Madhav Hayawadanrao Hoskot v. State of Maharashtra*, AIR 1978 SC 1548 = 1978 Crl.LJ 1678, while dealing with rights and requirements of a convicted person or prisoner in jail to have legal aid to file appeal, it was observed :

"(i) Service of a copy of the judgment to the prisoner in time to file an appeal and (ii) provision for free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. Both these are State responsibilities under Article 21. Where the procedural law provides for further appeal, these requirements will similarly apply. Thus, the prisoner's rights can be summed up as follows :—

(1) The trial Courts shall forthwith furnish a free copy of the judgment when sentencing a person to prison term.

(2) In the event of any such copy being sent to the jail authorities for delivery to the prisoner, by the appellate, revisional or other Court, the official concern shall, with quick despatch, get it delivered to the sentence and obtain written acknowledgment thereof from him.

(3) Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the jail authority.

(4) Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicable situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent Counsel for the prisoner's defence provided the party does not object to that lawyer.

(5) The State which prosecuted the prisoner and set in motion the process which deprived him from his liberty shall pay to assigned Counsel such fee as the Court may equitably fix.

(6) These benign prescriptions operate by force of Article 21, strengthened by Article 19(1)(d), read with sub-article (5) from the lowest to the highest Court where deprivation of life and personal liberty is in substantial peril.

Section 304 of the Code of Criminal Procedure, 1973 deals with the aspect of

legal aid to accused at State expense in certain cases. Where accused had engaged lawyers on his behalf in trial and he is not indigent, he cannot claim legal aid at State expenses (1988 (2) Cal.HN 108). Accused, a Government servant under suspension getting subsistence allowance cannot have free legal aid at the expenses of State ((1984) 88 Cal.WN 986). Indigence of accused should never be a ground for denying fair trial and equal justice (AIR 1974 SC 1143, AIR 1981 SC 928, 1981 Ker.LT 448). Courts can request legal aid committees and Bar members to defend accused in deserving cases (1983 Ker.LT 315). Free legal aid — AIR 1983 SC 624, AIR 1986 SC 991, 1987 (2) Ker.LT 64, 1985 Crl.LJ 424. Accused cannot insist upon services of a particular lawyer at the expenses of State (1992 (2) Crimes 1068, (1977) 81 Cal.WN 440). Appointment of *amicus curiae* (1988 Cr.LR (Raj.) 653, 1990 (1) BLJ 447, 1982 SCC (Crl.) 143). Where criminal appeal was disposed off without hearing Counsel appointed by Court, since the Counsel was not present, the case was remanded (AIR 1990 SC 1224 = 1990 Crl.LJ 1326).

Under the Code of Civil Procedure, Order XXXIII deals with suits by indigent persons and Order XLIV deals with appeals by indigent persons. The provisions of Order XXXIII CPC are not applicable to writ petitions (AIR 1977 Ker. 118). Indigency is personal economic condition (AIR 1993 Ori. 23). In *Union Bank of India v. Khader International Construction*, AIR 2001 SC 2277, it was held that the word "person" mentioned in Order XXXIII includes not only a natural person but other judicial persons also and the word "person" has to be given its meaning in the context in which it is used and therefore a public limited company which is otherwise entitled to maintain a suit as a legal person, can very well maintain an application under Order XXXIII, Rule 1 CPC. Order XLIV, Rule 1 CPC applies to persons seeking leave for the first time at appellate stage to file appeal as an indigent person (1980 (1) APLJ 377). Leave to appeal *informa pauperis* can be granted in Letters Patent too (AIR 1973 AP 295, AIR 1972 MP 133).

Legal aid and legal literacy camps are being well organised. The concepts are not only very attractive, they prove to be productive and useful as well. The alternative dispute resolution system virtually became a part of Indian Judicial System. The concept of pre-litigative settlements is also gaining good popularity. Public participations, participations by voluntary, cultural and social organisations should be further encouraged in the case of such programmes to make them more popular. Common people must fell and know the advantages of these programmes. These programmes should spread well into all sections of the society which can be achieved only by better organisation and better propagation. The voluntary dedicated wings are to be expanded for the purpose of achieving the requisite objectives and aimed goals in this regard.

The Legal Services Authorities Act, 1987 had been enacted with a view to provide free legal aid services to the weaker sections of the people. Section 19 of the Act deals with organisation of Lok Adalats and Section 20 of the Act deals with cognizance of cases by Lok Adalats. In *Kishan Rao v. Bidar District Legal Services Authority*, AIR 2001 Kar. 407, it was held that all parties must be present before Lok Adalat and notice need be issued to all parties or verification should be there if that compromise has been arrived between all parties to the litigation. Section 21 of the Act deals with award of Lok Adalat and Section 22 - powers of Lok Adalats. In *Board of Trustees of the Port of Visakhapatnam v. Presiding Officer, District Legal Services Authority, Vizag*, 2000 (5) ALD 682 = 2000 (5) ALT 577, it was held that decisions under the Act are binding on the parties just like compromise decrees.

The Lok Adalat system which is evolved as one of the modes of alternate dispute resolution is not a new concept evolved in our country. The panchayat system, a very popular system for resolution of disputes has been prevalent in our country from ancient times even from Vedic period. No doubt this system had been styled with different names at different times in different parts of this country. Whatever may be the names the substance of all these had been one and the same. This system had a set back upto a limited extent during Muslim rule but had been virtually destroyed on the advent of the British rule by the introduction of common law jurisprudence. Though the popularity of the system had been well reduced, the features of the system never had disappeared in *toto* in our traditional, multi-religious and multi-lingual society. This concept is more based on the faith in the panchas or mediators. Arbitration and Conciliation Act, 1996 at present and Arbitration Act, 1940 prior thereto are also certain examples of well recognised alternative dispute resolution system.

The reports and statistics from different States are really encouraging which go to show that popularity of the system is being well received by the public at large. Not only post litigative settlements, even pre-litigative settlements are reported. This trend shows the awareness of the public and their reception with conscious. By and large these settlements relate to matrimonial disputes, accident claims, labour disputes, land acquisition matters, civil and criminal litigations, insurance claims *etc*. In the conferences, annual meets, meetings, periodical scrutiny, repeatedly the intellectuals, voluntary organisations, public spirited individuals and concerned authorities have been suggesting several methods for improvement of the system and better implementation. Though there are a few ills reported from certain quarters about the functioning of system and the notable variance in between theory and practice, this system has been well recognised by the general public, in the short time itself, to be really a better working system to have quick redressal of their grievances. Let us hope that this system will prove to be better in the coming days ahead of us so that we will have the satisfaction that the objectives of the legislation have been achieved.

SOME ASPECTS OF THE LAW OF CONTEMPT

By

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The law of contempt as now enforced is statutory. In the Constitution, Article 215 states that every High Court shall be a Court of record and shall have all the powers of such a Court including the power of punishing for contempt of itself. Article 129 speaks of the Supreme Court in similar terms. After the enactment of the Constitution the High Court's powers are traceable to this Article and the earlier concepts regarding this subject are no longer relevant. The earliest statute on the law of contempt was Act 12 of 1926, which was later replaced by Act 32 of 1952. In 1971 the present Contempt of Courts Act was enacted. For the first time a specific definition of Contempt of Court was adopted. For a more elaborate discussion on the history of law of contempt (See 1954 Crl.LJ 1141 (FB)). The purpose of the 1971 Act was to define and limit the power of certain Courts for punishing contempt of Courts