

LEGAL AID: PITFALLS AND POSSIBILITIES ¹

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SCHEME OF THE PRESENTATION

- Introduction
- - The Legal Services Authorities Act 1987
- - Institutional structure of legal aid delivery
- Agenda of Legal Services Committees
- Programmatic content and Implementation
- Pitfalls and Possibilities

INTRODUCTION

- LSAA inspired by the draft legislation appended to the 1977 Report of the Juridicare Committee in two important features:
- (1) S. 2(1)(c) LSAA defines 'Legal services' as including "the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter." Thus the concept of legal aid is not confined to providing legal aid by way of representation.

THE LSAA

- (2) S. 12 LSAA identifies special categories of persons who would be entitled to legal aid irrespective of their qualifying the means test. A member of the SC/ST, a woman or a child, a victim of trafficking in human beings, a person with disabilities, a victim of a mass disaster, an industrial workman, a person in custody.

LSAA: THE INSTITUTIONAL STRUCTURE

- A hierarchical pyramidal structure of the administration of legal services through a network of institutions with a National Legal Services Authority at the top and a State Legal Services Authority in each of the States, and separate authorities at the High Court, District and Taluk levels.
- The composition of these authorities reflects a heavy leaning towards ex-officio members drawn from the serving government and judicial officers, the element of outside participation being kept to a minimum.

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- State authorities have usually not more than 15 members of which between 10 and 12 are ex-officio members. Likewise, in the districts there are between 5 and 7 ex-officio and 3 to 4 external members.
- There is a great deal of subordinate rule making in relation to the number of members, of the authorities, their experience, qualifications, powers, functions, terms of office, and other conditions.
- There is a distribution of rule making powers in this regard between the executive governments and the authorities.
- The shift therefore is clearly away from the beneficiary of legal services to the institution dispensing legal services.
- Not surprisingly, a sizable portion of the budget of these authorities is towards salaries of staff and maintenance of the establishment.
- Structure designed to co-opt the judiciary into the administration of legal aid while at the same time adding to the responsibilities of the judiciary.
- A district judge who already has judicial and administrative responsibilities within the judicial system has now to oversee the administration of the legal aid scheme as well. In this he is helped by other committee members who again are essentially, ex officio members or lawyers, each of whom is pre-occupied with her main activity.

AGENDA OF THE LEGAL SERVICES COMMITTEES

- **The key activities at present are:**
 - Providing legal aid by way of representation in cases that are screened for eligibility
 - Holding of lok adalats for settling old cases and compoundable criminal cases
 - Conducting legal awareness programmes
- **What the activities ought to include:**
 - Focus not only on litigation centric legal aid but incorporate preventive legal aid elements like advice, counselling and mediation
 - Make legal aid, counselling and advice at the point of entry into the system - within closed penal institutions
 - Enable the National authority to discharge its function of taking “necessary steps by way of social justice litigation with regard to consumer protection, environmental protection, or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills.” (S. 4 (d) LSAA)

PROGRAMMATIC CONTENT AND IMPLEMENTATION

- Organise periodic visits to closed institutions (not only prisons, but juvenile homes, police lock ups, women's shelters, beggars' homes) by team of lawyers, doctors and social workers and follow up with remedial steps
- Prepare brochures, pamphlets in the local language explaining laws, constitutional rights and remedies: tie up with local educational institutions to outsource such activity
- Travel to remote corners of the district to increase visibility and enthruse participation by the disadvantaged sections in the legal services programmes
- Facilitate Physical accessibility: for e.g. the question that needs to be addressed is `Is this court building designed to facilitate access to a disabled or differently enabled person?
- At another level, `Is there a place in the court premises where the litigant can readily access information about her case, the lawyer and where to find public utility services?
- Focus on target areas:
 - Needs of victims of crime
 - Persons with disabilities
 - SCs/STs
- Review performance of legal aid lawyers by seeking feedback from legal service seekers: suggestion/complaints box

PITFALLS AND POSSIBILITIES

- Too much emphasis on lok adalats: Can never substitute need for quality justice because those agreeing to settle invariably do it for negative reasons
- Lawyers cannot be expected to subsidise the legal aid programme: Quality lawyering has to be compensated
- There can be a combination of the judicare and salaried lawyer models depending on the complexity of the case
- It is an irony that there is a heavy under-utilisation of funds: shortage of finance is therefore not an excuse
- As an administrator, a judge is presumed to be able to combine managerial skills with the judicial. This does not account for the heavy workload of cases that confronts the under-staffed subordinate judiciary. Therefore infrastructural support will have to be provided if the present institutional model has to be effective
- It also calls for a reorientation in the approach in the matter of administration of legal services. It has to combine elements of accessibility, transparency and accountability.

- The system derives its legitimacy from those whom it seeks to serve.

JUSTICE KRISHNA IYER'S EXPLANATION OF THE RATIONALE OF LEGAL AID

“The spiritual essence of a legal aid movement consists in investing law with a human soul; its constitutional core is the provision of equal legal service as much to the weak and in want as to the strong and affluent, and the dispensation of social justice through the legal order. The political thrust of the movement is that if legality lets down the masses and protects, in actual working, only the upper bracket, anti-law will become a way of life of the numerous poor, the people being prone to seek justice in the streets in preference to the law in the courts.”