

Ensuring Equality : Role of Legal Services Authorities

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Law is now acknowledged to be an instrument for social change. This realization in India is reflected in various legislations. The Constitution of India incorporates the following valuable provisions:

- Ar. 38 (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively, as it may, a social order in which justice, social, economic and political, shall inform all the institution of the national life.
- (2) The State shall, in particular, strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, feasibilities and opportunities, not only among individuals but also amongst groups of people residing in different areas or engaged in different vocations.
- Ar. 39 (A) 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.

Among the laws the parliament enacted in pursuance of these mandates, the Legal Services Authorities Act, 1987 assumes much importance. It is this legislation which gives a blue print for action for the law to act as a catalyst to social change.

The concept of a State includes Executive, Legislature and the Judiciary. Generally speaking, the Judiciary is not included in evaluating every action of the State. No proactive role is expected from the Judiciary. But the NALSA Act envisages a proactive Judiciary in unison with executive and courts in ensuring equality. Unfortunately, this legislation is yet to be understood and implemented in proper perspective. Its potential becomes evident if one looks into S-4 which among other things enacts:-

S.4. Functions of the Central Authority:

The Central Authority shall perform all or any of the following functions namely :

- (a) x-x-x-x-x
- (b) x-x-x-x-x
- (c) x-x-x-x-x
- (d) take 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;
- (e) organize legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;
- (f) x-x-x-x-x
- (g) undertake and promote research in the field of legal services with special reference to the need for such services among the poor;

- (h) x-x-x-x-x
- (i) monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act;
- (j) x-x-x-x-x
- (k) x-x-x-x-x
- (l) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures.

The empowerment of the poor in ascertaining and asserting their rights with a view to eliminate inequality as envisaged in Art. 38 is aimed to be activated by the various ways mentioned in the Act. The idea for encouraging the social movements and the indigenous ways of dispute resolution is signified in S.4 (i) (j) and the statement of objects and reasons which spelt thus :

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

The recent decision of the Supreme Court of India in K.N. Govindan Kutty Menon vs. C.D. Shaji, Civil Appeal No. 10209 of 2011 upholds the serene legislative intention expressed in the objects and reasons. In this case an award made by the Lok Adalat came to be equated with the decree of a court for execution. The respondent in this case owed an amount of Rs. 6000/- to the appellant. In the Lok Adalat conducted by the District Legal Services Authority an agreement was reached to pay back the money in five installments. Non compliance of the appellant took the case to the Munsiff Court and then to the Kerala High Court which despite the clear language of Section 21 of LSA Act, ruled that it is not equivalent to a decree of court and refused to execute.¹

The Supreme Court correctly held that Section 21 contemplates a deeming provision and therefore it is a legal fiction that the award of Lok Adalat is decree of Civil Court. It also took this opportunity to preface the objectives of the NALSA Act thus :

¹ **S.21 enacts : Award of Lok Adalat** – (1) Every award of Lok Adalat shall be deemed to be a decree of a Civil Court or, as the case may be, an order of any other Court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of section 20, the Court-fee paid in such case shall be refunded in the manner provided under the Court-Fee Act, 1870 (7 of 1870).
 (2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any Court against the award.

Free legal aid to the poor and marginalized members of the society is now viewed as a tool to empower them to use the power of the law to advance their rights and interests as citizens and as economic actors. The Parliament enacted the Legal Services Authorities Act, 1987 in order to give effect to Article 39-A of the Constitution to extend free legal aid, to ensure that the legal system promotes justice on the basis of equal opportunity. Those entitled to free legal services are members of the Scheduled Castes and the Scheduled Tribes, women, children, persons with disability, victims of ethnic violence, industrial workmen, persons in custody, and those whose income does not exceed a level set by the government (currently it is Rs 1 lakh a year in most States). The Act empowers Legal Services Authorities at the District, State and National levels, and the different committees to organize Lok Adalats to resolve pending and pre-litigation disputes. It provides for permanent Lok Adalats to settle disputes involving public utility services. Under the Act, 'legal services' have a meaning that includes rendering of service in the conduct of any court-annexed proceedings or proceedings before any authority, tribunal and so on, and giving advice on legal matters. Promoting legal literacy and conducting legal awareness programmes are the functions of legal services institutions. The Act provides for a machinery to ensure access to justice to all through the institutions of legal services authorities and committees. These institutions are manned by Judges and judicial officers. Parliament entrusted the judiciary with the task of implementing the provisions of the Act.

This is a milestone decision giving relief not only to the poor but also to the courts dealing with offences under the Negotiable Instruments Act. In fact, these cases have been straining every nerve of our judiciary. The provisions in the NALSA envisage application of balm to the wounds of the little Indian Litigant.

In this context, it may be pertinent to mention that despite its being mentioned in provisions like Section 357 (a) of Cr.PC 1973, their application seems to be scanty. The reason for this seems to be the apathy shown by the various State Governments and the Central Government in drawing up appropriate schemes for determining and awarding compensation to the victims of crimes. The scheme should contain provisions for rehabilitating the victims or their dependants.

The idea of S.357(a) is benign, that, even when the compensation is inadequate for rehabilitation or when the offender is not traced and tried, the victim or his dependant could seek compensation from the Legal Services Authority. It has, also, been provided for, that the award of compensation has to be settled within a period of two months. S.357(a) thus provides for a code for taking care of the victims of crimes in distress. The important and interesting aspect in this scheme is the role assigned to the Legal Services Authorities with the court and the Govt. in healing the wounds of the victims of crimes.

The scheme is yet to be put into operation in several states. The state governments have not yet drawn up the scheme envisaged in S-357(a). Unless and until the schemes envisaged under S.357(a) are drawn up, the dream of the framers of Art. 39A of the Constitution, of seeing the Judiciary also as part of the State joining hands with the Govt. and the Legal Services Authorities in ensuring equality, may not come true.