

The Indian Law Institute New Delhi
Karnatak University
Seminar on Criminal Law at Dharwar
(December 17 to 22, 1978.)

LEGAL AID IN CRIMINAL PROCEEDINGS

BY

*

PRANOD KUMAR

It is only for the last two decades that programmes for legal aid are being advocated largely in democratic societies as a result of the political philosophy of welfare state. There is growing recognition that with the disappearance of religion, custom and public opinion as instruments of social regulation, the width and coverage of law has increased almost to encompass the whole of man's life in society. It is recognised that with the spread of the law the benefit of the system can be secured only by those who can afford the high cost of litigation and the services of an expensive profession. The schemes therefore for assisting the disadvantaged groups in society to secure the benefits of law have been suggested and legal aid is the most important of these schemes. The legal aid scheme depend upon substantial grant from the State and therefore it follows that the schemes work better in countries like U.S.A. where large federal grants are available. In India, for about a decade serious steps have been taken to finalize effective schemes of legal aid. Justice Krishna Iyer and justice Bhagwati Committee's report are being given final shape. As is well known the Chief Justice of India has called a seminar on legal aid on behalf of the Indian Council of Legal Aid on December 9, 1978 and it is hoped that some workable scheme, will emerge and will finally be implemented. The success of any scheme of legal aid largely depends on the development of a social conscience by the legal profession which can only be generated through a highly imaginative legal educational and legal training. So long as the law school curriculum and system of education remains what it is, the schemes, however well thought of, will remain unrealistic and without much impact. Contemporary areas of agrarian reforms and schedule caste legislations and illustrations of good intentions without results.

The impact of legal aid, wherever schemes have been used, is largely in the area of Civil Law.

* Lecturer in Law, Lucknow University, Lucknow

Generally legal aid in criminal law is conceived of as an assistance of a counsel to the accused persons undergoing trial. With the increase in the coverage of crime from the traditional to the more debatable areas of life, the problems assume tremendous proportions. It is well known that criminal sanction is being used for mere regulatory purposes and in a society like India with cultural heterogeneity and mass illiteracy people are unable to comprehend and appreciate the new role of criminal law. The result is that they feel bewildered and confused. In this context legal aid in criminal law area should in my view have the following four objectives:-

- (i) To bring to all sections of society the objectives of new criminal legislation and the urgency of its introduction.
- (ii) The education of the lower echelons of criminal administration machinery on the objectives of the new legislation and the methods and processes of its implementation.
- (iii) Vigilance function to watch and see whether the implementation of this legislation is appropriate and is not used for advancement of group interests and corruption.
- (iv) Assistance to the accused once the prosecution is launched.

Needless to say that, even if willing and conscious, legal profession alone cannot perform all these functions. It has to be assisted by the other agencies like the social scientists and the enlightened citizen of the locality and particularly the students of law. The State will have to finance on a performance basis the organisation and the functioning of the units required to be set up under such a scheme.

The assistance at the trial level can have many forms but will depend upon the Bar Council's willingness to set up a rotatory panel of names who will undertake the task of defending the accused for a period and care has to be taken to assign this task to experienced advocates. It will be more realistic to classify the panel of lawyers on the basis of categories of crimes, for example, a separate group of lawyers be assigned to deal with economic crimes or crimes against new social welfare legislation like agrarian reform, schedule caste legislation and crimes of immorality, bribery, corruption and prohibition. Another area in which effective assistance is needed is the area of security of good behaviour which has been identified by

criminologists as an agency of creating confirmed criminals out of innocent poor people. In fact in our country this is the area where efforts of lawyers and non-lawyers reformers should be concentrated by way of pilot project and the efficacy of legal aid schemes tested and evaluated for final adoption in other areas. The attitude of the police will have to be changed, not by legislation, but by persuasion during the operation of the pilot studies in this area.

A scheme of assistance in a court trial wherever tried on adhoc basis so far has generally failed because of vague and ineffective methods of distributing the grants among lawyers and also because of a feeling amongst lawyers in the concerned area that benefits of the schemes are confined to a few people on the basis of discretionary pick and choose without any objective rules for selecting the personnel. This was the feeling expressed by a group of lawyers about a grant of 5 lacs of rupees of the State of Rajasthan for legal aid. It was also felt by this group that a disproportionately large amount of money was spent upon inauguration and superficial propaganda.

The most important single function and a Primary one at that is the communication of the purposes and ideology of criminal sanctions, particularly its extension in the new non-traditional areas of life. As the experience of community development programmes have show, this task cannot be performed by non-local outside agencies. It is suggested that the law students belonging to the concerned groups and areas be selected for a three to six months training in ideology and social work. These persons may be given a stipend for a specific period, say for three years, which will coincide with their legal education course. These persons will communicate the ideology and the purposes in their communities and will be listened to because they belong to the community of the area concerned. Another advantage of this linkage will be that these students will be able to pin-point the specific social problems of their community or area calling for legal and administrative solutions. The administration can thus isolate for specific treatment and implementation the pin-pointed areas. This will call for better acceptance of the legal aid and administrative system. Once the awareness of ideology and purposes is created the chances of criminal behaviour will also be reduced.

The equally important is the need to re-educate the administrative machinery concerned with

criminal law enforcement. A dual treatment is required in this area. Specially chosen law Teachers, Lawyers and Senior law students should be given a refresher course and they in turn should spend some time with a group of administrative officers observing the performance of their functions and discussing with them the different and new methods of performance. The Officers could also be exposed to a programme of lectures through in-service training programmes on selected case studies. The career and performance of Officers so trained should be got evaluated for a period of three to five years by means of sample studies.

Equally important of legal aid function is the vigilance function. The experience of setting up Committee of local people for specific purposes is not new in our country, but some how committees set up by the State agencies or politicians in the areas like rationing and hoarding etc. calling for a watch & ward function of administrative agencies has not worked well, either because they are not trusted by the people or because they have themselves become prone to get illegal advantages by misusing their special position. As the evidence of Panchayat Raj has shown, even the method of election to select these agencies has not succeeded. It is suggested that an experiment should be made with vigilance groups of one year duration in a particular area and the personnel should be selected by sheer alphabetical ordering of the lawyers, the student and other educated persons available. This group should be given some organisational grant and should be held responsible for a full report at the end of its one year term on the nature of criminal law problems and their handling and treatment during their tenure of office. Once such an experiment is tried for a period of over five years, the system will have an educational and communicational value and may lead to better arrangements in future. Officials of Government and political parties should be kept out of such vigilance groups. The selection of the vigilance group should be the joint responsibility of a committee consisting of a representative of the District Bar Council, a representative of the university of the area and a nominee of the District Judge.

People in our country understand traditional crimes but there is a wide gap between the legislative intent in the non-traditional crime area and the people. It is true that some gap is always there between the law and the people's beliefs. The gap in our country however is an alarming one as is evidenced

by the case of Maya reported by an American Social Scientist in his studies of Indian Society. The girl Maya was married and while staying at her father's house was three months pregnant when she went to her father-in-law's house after the Gauna ceremony. The father-in-law's family without making too much fuss quietly refused to accept her. She returned to her father's house and the father on learning her condition, which was allegedly caused by a cousin of Maya, put an end to her life to prevent her from being a cheap urban prostitute and living all her life in shame and ignominy. By the Law of India it was a pure and simple case of murder but it was not reported even by a police constable who was a member of the father's family. The action of the father was morally approved by the police constable as well as by the village community. The case of Maya and number of cases of 'Suttee' which were reported recently, clearly show the operation or non-acceptance of the value of national legal system based on western egalitarian and regionalistic standards. Many illustrations of the divergence between national objectives of the national legal system and the living law believes can be pointed out. The national legal system and its agencies have to co-exist with these believes. Jurists sometimes suggest that the national legal system should permit the existence of plural systems of law but obvious situations raised by the case like Maya cannot be advocated for co-existence. It is in this context of a wide variety of contradictions that legal aid Schemes have to operate and the sponsors of the Schemes should at least be conscious of the problems that these contradictions pose. These contradictions and the emerging problems of value - conflict becomes more poignant and meaningful in the criminal law area because criminal law of a country unequivocally projects values over which discussions and doubts continue to rage particularly in a heterogeneous society like India consisting of many religions and cultures and belief systems. Such contradictions are not normally existent in the civil law area because this part of the legal system ranges round wealth and resource production and distribution and pecuniary advantages which are often beyond the culture and belief-system.

