BLEAK HOUSE+

A CRITIQUE OF THE LEGAL SERVICES AUTHORITY ACT

PEOPLE'S UNION FOR DEMOCRATIC RIGHTS
DELHI
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The Monsoon Session of Parliament passed a bill that entails serious violations of the Constitution and the norms of constitutional propriety. The ill thought out Legal Services Authority Bill(No.82 1987), aimed at providing free legal aid services to the weaker sections of society, was rushed through both houses of Parliament in the last session without much discussion. The Bill negates everything that the legal aid movement in India has been striving for. At best it seeks to co-opt the legal aid movement and local efforts at adjudication. And at worst, it seeks to marginalise them by imposing on them a highly bureaucratised model of justice delivery. It gives the executive more powers over the judiciary, centralises power in government controlled legal aid authorities and leaves the provision of legal services in the hands of a few judges. The bill separates the administering of justice to the majority of the Indian population from the normal purview of the judiciary and subjects the latter to the control of the executive.

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THE ACT

The Act, awaiting the President's assent to become an Act, recommends the setting up of statutory legal services authorities at the National, State and district levels and gives them legal sanction to set up Lok Adalats. It makes the Chief Justice of India the notional head of the National Legal Services Authority to be constituted by the Centre. The executive chairman would be a serving or a retired judge of the Supreme Court. Similarly sitting judges of the High Court or the District Courts would serve on or chair the authority at the state or district levels.

It makes Supreme Court judges "subject to general directions of the Central government" which will "authenticate their work". High Court judges will be similarly placed but as members of the state authorities they will "be guided by such directions as the Central government, the state government or the Central authority may give in writing". District judges will intermingle freely with other district officers who will "authenticate" this part of their work and perform functions fixed by the district authority with the state government. All these judges are expected "wherever appropriate" to "act in co-ordination with other governmental and non-governmental agencies".

It allows legal aid to be given to all those who qualify under a means and merits test. The means test allows legal aid to be given to all with salaries of Rs.9000 and below (in courts other than the Supreme Court) and Rs.1,200 and below if in the Supreme Court. (The Bill incidentally does not

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mention whether these earnings are to be annual or monthly?) The merits test restricts the giving of legal aid to only those cases where a prima facie case can be established.

Legal aid given under this scheme would be administered in Lok Adalats constituted by the National Legal Services Authority which sitting judges of the respective courts would serve. These judges would be appointed to the Lok Adalats by the authority. The district authority can, on the application of any one of the parties concerned, transfer a case in any court to the Lok Adalats. These Lok Adalats would be immune from appeals. All cases eligible for free legal aid under the Act would be heard in Lok Adalats. So can any other case be heard in a Lok Adalat where grounds exist for a settlement. Thus they serve two functions - legal aid and speedy justice.

THE IMPLICATIONS

Violation of Article 50: This Act is a serious violation of Article 50 of the Constitution which enjoins the government to "take steps to separate the judiciary from the executive". In trying to discharge one Constitutional obligation(Art.39A), the government will violate another part of the Constitution.

It is wholly improper and unconstitutional to make the Chief Justice of India patron of a Governmental statutory authority or a serving judge of the Supreme Court, High Court or any lower Court as members of government-run and government-dominated bodies. Such judges will be forced to serve two masters: the government and their own oath of

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THE RIGHT TO LEGAL AID

The right to legal aid is contained explicitly in the Constitution in Article 39A, introduced by the 42nd Amendment, which states that the State shall "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 reasons of economic or other disabilities." Apart from this, certain judgements of the Supreme Court have interpreted Article 14 (equality before law) and Article 21 (right to life) as incorporating within them the right to legal aid.

Until the mid-seventies however the only type of legal aid available in civil cases was in the nature of exemption of court fees if suits were filed by poor people (after vertification - under Order 33 of the Civil Procedure Code). In criminal cases, by an amendment to the Code of Criminal Procedure (Cr.P.C.) section 304 was introduced to provide legal aid before the Sessions Court to an accused who has insufficient means to engage a lawyer. Here the onus is on the High Court, with approval from the State Government, to frame rules for the operation of the scheme. It should be noted that the Supreme Court has held that in the absence of a law, the state cannot be compelled by an accused to provide free legal aid.

After the introduction of Article 39A in 1976, a number of states framed legal aid and advice schemes.

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office. District Court judges as members of the District Authorities, will have to take instructions from State governments, Central government a d State Authorities. Similarly, High Court judges as members of State Authorities will take instructions from the Central government, the Central Authority, State governments and the State Authority. The Act thus would end up creating a class of judges who are working with the executive and duty bound to obtain instructions from them. Surely these judges would stand to violate the terms of their oath under the 3rd Schedule of the Constitution, to act "without fear or favour, affection or ill-will".

It is worth recalling that upon his appointment to the Press Council when it was first formed, Justice J.R.Mudholkar chose to resign from the Supreme Court for reasons of Constitutional propriety. The appointment of a sitting judge of the Supreme Court, Justice J.L. Kapoor, as chairman of the Law Commission drew a great deal of criticism for adversely affecting "the dignity and independence of the Supreme Court".

Courts of Unbounded Jurisdiction: The Act violates the principles of justice and further strengthens the hold of the executive over the judicial process by setting up parallel executive courts of unbounded jurisdiction over all civil, criminal, revenue or other matters.

The actions of the Lok Adalats set up by the Legal Services Authorities are immune from appeal and protected

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A Committee for the Implementation of Legal Aid Schemes (CILAS) was also set up at the centre. While several states based their schemes on the model scheme of the CILAS, several others set up innovative schemes which have had a good track record, despite limitations. None of this rich experience of providing legal aid was considered by the drafters of the present Act, who created a bureaucratic model of the CILAS as a statutory Authority and reproduced it mechanically till the district level.

The Krishna Iyer and Bhagwati Committees(1973 and 1977 resp.) had made several far-reaching recommendations. Apart from the difference in perspective(see box on 'Legal Aid and Social Justice') they had stressed the need for legal services being the responsibility of the courts rather than the executive as in the present Act. They had even recommended a provision for legal cess to be levied by the courts to fund the legal aid schemes. Far from funding in the present Act being in the control of the courts, not only is it in the hands of the executive, it gives the centre powers over the states and is violative of the principles of federalism.

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as "actions taken in good faith". Further, various provisions of the new Act deny judicial review of the actions of the Authorities. Under the Constitution the conduct of judges cannot be discussed in Parliament or in the State Legislatures. Thus the judges serving on the Legal Services Authority or the work of the Authority will be above any accountability to the judicial system or to the public. This is denying accountability and giving unlimited powers to what is nothing but another branch of the executive.

The district Authority can, on an application from one party, transfer any case in any court of the country to the Lok Adalats. As it stands the Lok Adalats can receive transfer cases even from the Supreme Court. Imagine a district authority empowered to tell the Supreme Court that it cannot continue hearing a case!

No provisions for rural workers: While the Act mentions industrial workers as a category of people who are eligible for free legal aid, no mention is made of rural workers- landless agricultural labour, small farmers and rural artisans.. who constitute a large proportion of our population. It should be noted that both the Krishna Iyer Committee and the Bhagwati Committee had recommended that rural workers be specifically included as eligible for free legal aid.

No provisions for legal advice: Though legal services include both legal aid and advice, the Act contains no provisions for legal advice.

Violation of Federalism: The Act violates the principles of

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LEGAL AID AND SOCIAL JUSTICE

Contract labourers working in the quarries outside Delhi are not paid their wages for several months, agricultural workers are killed in a police firing in Bihar and no compensation is announced, people are slowly poisoned due to industrial effluents but do not have the right to know what the industries in their neighbourhood is doing, thousands of fishermen are rendered destitutes in Madras due to city beautification drives ..... All these people need legal aid. None of them can afford the costs of fighting a case. Few of them even know their rights under the law.

In a country like ours where the majority of people who work in factories, mines or in the fields have to struggle against inhuman conditions of work and an oppressive social structure, no system of providing legal aid will be meaningful if it is focused at them.

It was recognising this that both the Krishna Iyer Committee(1973) and the Bhagwati Committee(1977) on legal aid, felt that the traditional legal services programme were inadequate since the underlying philosophy accepted the socio-economic structure, creating only charitable institutions for helping people on a one-to-one basis. What was needed, they felt, was a collective approach since the problems of the poor are common to all the poor and must be solved collectively. They further pointed out that the existing legal aid machi-

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Legal aid and Social Justice contd.

nery wrongly identified law with justice, when law itself was unjust. Legal services programmes thus should provide representations to social and economic protest and "pose lawyers against unjust laws". The present Act contains none of their recommendations. In fact the merits test ensures that the majority of such cases will not be heard. And it does not even include rural workmen as a specific category eligible for free legal aid.

In the last few years many of such cases which reach the Courts are being filed and fought by Civil Liberties organisations as part of what has been called Public Interest Litigation. Apart from the examples in the first paragraph - which are some of the cases that the PUDR(Delhi) has fought - they have taken up diverse issues - slum dwellers in Bombay, encounter deaths in Andhra Pradesh, police torture in West Bengal, communal slaughters in Meerut and several others. Despite the dramatic interventions of the Courts in recent years, thanks to these organisations, they have also several inherent limitation. Such organisations have almost no financial resources to fight cases, depending largely on the goodwill of their lawyers and small self generated resources. They do not have sufficient organisational spread to ensure that they can get affidavits, witnesses, promise even minimum protection to witnesses and ensure the implementation of the decisions. With

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such limitations the number of cases these organisations can handle is almost negligible compared to the magnitude of the problem. Far from helping them however, the state, for all its avowed concern for providing justice to the needly, puts more hurdles in their way.

For a meaningful system of providing legal services to those who need them most, it is necessary to create a machinery specifically geared to their problems. The question however still remains - can we expect this of a state which enacts unjust laws and in its day to day practice brutally violates the democratic rights of the majority of our people?

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federalism by making certain items a charge on the Consolidated Fund of the states when normally appropriations from the Fund are made by the state Legislature. If a state does not follow the instructions of the Central government and if it does not set up the Legal Services Authority, the Central government is given wide uncanalised powers to remove difficulties and make rules.

Restrictive eligibility for cases: The merits test of eligibility to free legal services is too restrictive. Requirement of a prima facie case ensures that deserving social causes will not be heard. The most significant advances in the use of courts for social justice have been made in those cases which had the weight of precedent against them(see box).

Diminishes power of Governor and High Courts: The Act infringes and curtails the powers of the Governor and the High Courts to appoint judicial officers by recommending the appointment of judges through the executive authority. Thus it permits the state and district authorities to appoint district judges to the Lok Adalats.

THE CONCLUSIONS

Given these facts it is evident that the Act is poorly thought out. One can wonder why the government should have been in such a hurry to rush it through within a week of it being introduced in Parliament. As it stands, the Act is un-constitutional violative of the principles of judicial integrity and federalism. Instead of creating Lok Adalats which are deprofessionalised models of quick and cheap justice

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delivery aiming at using the juristic potential of the people, the Act does the opposite and creates inequitous courts of unbounded jurisdiction of a kind worse that those contemplated during the emergency.

The Act comes in a climate when the limited role which the judiciary had established as enforcers of social justice is being negated. This Act we feel, would serve only to strengthen this trend and ensure that the limited space for legal redress which exists for the people of this country is totally wiped out.

The People's Union for Democratic Rights thus urges the President not to give assent to the Act but instead to refer it back to the Cabinet for reconsideration, and advisory opinion be taken from the Supreme Court. We further urge the democratic sections of our people, and particularly those who as lawyers, judges or others are linked with the judicial system, to raise their voice against this latest attack on their rights.

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