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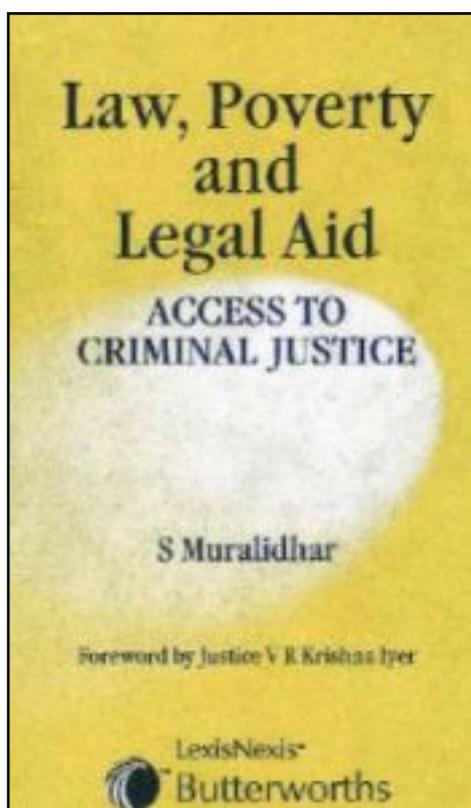
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BOOKS

Dimensions of legal aid

V. VENKATESAN



Law, Poverty and Legal Aid: Access to Criminal Justice by S. Muralidhar; Lexis Nexis (New Delhi); pages 454, Rs.325.

INDIA, it is said, is a highly litigious country. In other words, the

tendency to litigate, rather than settle disputes amicably, is irrepressible among Indians. This, it is pointed out, perhaps accounts for the huge number of cases pending in the High Courts and the lower courts, because the system's ability to augment correspondingly the strength of the judiciary is limited. In a sense, people exercising the option to litigate testifies to their abiding faith in the judiciary, whatever the costs involved in the process.

However, this confidence in the rule of law has its limits. Although all are equal before the law, in practice some seem to be more equal than others, and this results in the denial of easily available opportunities to access justice. Article 39A of the Constitution - inserted by the 42nd Amendment Act in 1976 - offers a remedy to this problem by directing the state to provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities to secure justice are not denied to any citizen by reason of economic or other disabilities.

The constitution of the Committee for the Implementation of Legal Aid Schemes (CILAS) in 1980 was a major step in institutionalising legal aid. The Legal Services Authorities Act, 1987, displaced the CILAS and introduced a hierarchy of judicial and administrative agencies. The LSAA began to be enforced only eight years later, under the directions of the Supreme Court. It led to the constitution of the National Legal Services Authority (NALSA) at the Centre and a State Legal Services Authority in the States to give effect to its directions.

As S. Muralidhar, a well-known advocate practising in the Supreme Court, reveals in his book, the realisation and enforcement of the right to legal aid is still a challenge. The budget for legal services, he says, is about Rs.3 crores a year for all States and Union Territories and legal services committees in the country. Much of this amount, he claims, remains unutilised and no accounts of expenditure are available for money that is spent. Why the issue has not caught the attention of lawmakers and investigative journalists is a mystery.

In Appendix 12, the book carries a statement showing the provision of funds by NALSA during 1995-2001 to various State Legal Services Authorities. Many States that had been getting grants in earlier years stopped seeking grants from NALSA in 2000-01. These States include Andhra Pradesh, Bihar, Goa, Tamil Nadu, Karnataka, and Maharashtra. Some States that had accepted huge grants in the first few years took less in later years, pointing to the way grants were not used fully. What this shows is that the State legal aid authorities have not shared NALSA's commitment to spread awareness to ensure there are more users of free legal aid. Even the existing data on the number of beneficiaries of legal aid may be inflated and unreliable.

The author suggests that the unspent funds could be used to meet the hidden costs of litigation. While the legal aid programmes may be used to pay court fees and meet the costs of legal representation, of obtaining certified copies and so on, it usually does not take into account the bribes that are paid to the court staff, the extra fees paid to the legal aid lawyer, the cost of transport to the court, the bribes paid to the policemen for obtaining copies of depositions and the like, or to prison officials for small favours. As a result, legal aid beneficiaries do not get services for free after all.

The author also suggests that the unspent funds could be used to enable a legal aid beneficiary, who emerges innocent at the end of a long litigation, to approach the courts seeking that he or she be awarded the costs of litigation. Muralidhar claims that this is an anomaly in the Criminal Procedure Code, 1973, which remains unrectified. Even in cases where the Supreme Court awards an acquittal to a prisoner who has spent over 10 years in custody, the court does not award the appellant the costs of the litigation. In the Rajiv Gandhi assassination case, for example, the Supreme Court acquitted 19 of the 26 accused of all serious charges eight years after they had been arrested. Through that time, they were kept in custody, without a single day's bail, and with a death sentence hanging over them for a part of that time. No costs were awarded.

Muralidhar's diagnosis of the problem - that there has been a shift away from the beneficiary of legal services to the institution dispensing legal services - therefore appears valid. He notes that a sizable portion of the budget of these authorities is spent on the salaries of staff and maintenance of the establishment.

It is a formidable challenge to make the formal right to legal aid an effective right for persons interacting with the criminal justice system as accused, complainants or victims, Muralidhar finds, especially because most of these people are socially and economically disadvantaged. The book, he claims, is an attempt at formulating a workable approach to meeting this challenge.

Part of this challenge is declaration as an enforceable fundamental right, the right of an indigent person to legal aid at all stages in the criminal justice system. The statutes, including the Criminal Procedure Code, the LSAA and the prison manuals, will require amendments to reflect this declaration. Muralidhar argues that Article 22 (1) of the Constitution - which deals with protection against arrest and detention - has to be amended to provide for the right of a person under

preventive detention to legal assistance of his choice, and the right of an indigent person so detained to free legal aid in all legal proceedings.

Muralidhar suggests, rightly, that the experience with legislation criminalising the offence of untouchability demonstrates how the existence of the law does not necessarily result in a change in social equations. The inability of Dalits to invoke the law meant for their empowerment - because of the fear of reprisal from the upper castes - has underscored the need to spread awareness about the law and to provide legal assistance. There can be no argument about his view that such awareness generation must be one of the principal tasks of the legal services committees. The fact that legal aid committees have so far not taken this as their principal task perhaps explains why the law against untouchability has remained ineffective.

The value of Muralidhar's book lies in drawing attention to the 'invisible' population of 'status' offenders - vagrants, the mentally ill, sex workers - that languishes in our jails and other custodial institutions. Their very existence, he says, is a comment on the penal law that labels them 'offenders' and puts them within the criminal justice system as criminals. The right to legal aid to this section of society is critical for them to protect their rights to life and dignity. Its denial, as revealed by the case histories documented in the records of the Sheela Barse case (concerning the mentally ill in jails in West Bengal and Assam), the Agra Protective Home case and the Delhi Beggars' Home case, throws them back irretrievably into a vortex of crime and poverty.

The author cautions against emphasising the rights of victims of crime to the exclusion of the rights of the accused - as recommended by the Malimath Committee, set up during the National Democratic Alliance regime. This, Muralidhar argues, has led to an unsustainable point of view that the right to silence of the accused during interrogation, and trial and presumption of innocence - the bulwarks of criminal jurisprudence - are dispensable. He believes that the impatience for more convictions should not blind us to the right of access to equal and fair justice both for the accused and the victim.

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