ACCESS TO JUSTICE

AN ANALYSIS OF THE STHANIKA NYAYALAYA BILL-2003

SUBMITTED TO: **LOK SATTA**

SUBMITTED BY: Mahfooz Nazki
- STUDENT OF **NALSAR** UNIVERSITY OF LAW-HYDERABAD.

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INTRODUCTION

Access To Justice is not a new topic. It has been in debate for quite some time. While the developed countries have gone far ahead in the modes of justice delivery, countries like India are still trying to combat the traditional hurdles like proximity, language etc. Some efforts have definitely been made and steps taken. The supreme court of India has initiated the technological reform by adopting the Singaporean model of digital justice. It is only in the initial stage and will take quite some time to come fully into operation and replace the traditional system. But the important point is how many people actually benefit from it? How many people in the supreme court itself know how to operate the system? Unfortunately the number is minimal in both the cases. What we need to do is to solve the problems of the poor, at the grass root level who do not even have an access to the munsif court-and this is what the majority of Indian population is made of. Fast track courts also proved to be a relative success but there is still a long way to go. There are millions of cases pending in the courts and god knows haw many go unreported. But what do we do to solve the problem? Argue against a bill that seeks to redress the problems of millions of poor people-for our own selfish interest. And these arguments spring from none other than the saviors of justice themselves-the lawyers. Digital justice, virtual court rooms, web attorneys-this is what the justice delivery system of developed countries sounds like. And these are effective tools of justice dispensation. I do not have the courage to suggest this for our Indian courts at the grass roots for I know under the current scenario I would only end up making a fool of myself. If not this then what? Sthanika Nyayalayas-that would be a good option. But suggest a plan such as this to the legal community and your locus standii is questioned? Who are you to introduce the bill? What business do you have with the legal set up? Even if it is granted that the person concerned does not have the locus standii (which off course is not the truth),why do not the people who argue against the bill themselves try to solve the problem. An oracle would confirm that they will not. Why? but I do not have the locus standii to ask that question…Do I?

RESEARCH METHODOLOGY

The research methodology adopted for this particular project is completely doctrinal. All The sources referred to were from the libraries of the Lok Satta and that of the high court. Internet has also been relied upon to a great extent.

FACTORS INFLUENCING ACCESS TO JUSTICE

In his paper "local courts-An idea whose time has come" presented in the all India seminar on access to Justice, Dr Jayaprakash Narayan suggested the following factors.

1. Number of judges.
2. Physical proximity.
3. Procedures.
4. Language.
5. Speed.
6. Costs.
7. Perjury.
8. Fairness.

The are definitely the most important factors, I would only elaborate on a couple of these factors a point out a few more.

LANGUAGE:

It is pointed out that only 3% of the Indian population understands English. But can a person who understands the English language understand the "legal language" as well? Latin maxims(like ex dolo malo non oriter action and scriptum predictum non est factum)coupled with the use of seemingly endless sentences make it impossible for even an English knowing person to understand the "legal language". As rightly pointed out in the paper by Dr. Narayan, language has to be simplified. The legal jargon that the lawyers have woven for themselves keeps the lay away from the law. But the fact is that it is for the lay that the law is made and hence they have a right to fully be aware of it and for this an understanding the law is a precondition which can only be done if the language is simplified.

FAIRNESS:

Fairness also encompasses the larger question of justice based on religion and caste. I would, here, like to draw the attention towards the practice of racism in the United States Of America. A black is 4.3 times more likely to be given a sentence of death compared to his white counterpart.

"*Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die.*"

- Justice Blackmun, former judge of the US Supreme Court, 1994.

There have been a plethora of studies that point out to the fact that race does play an important role in determining the severity of the sentence awarded. An analogy is drawn out here between the caste system of India and the practice of racism. Unfortunately, there have not been many studies bringing out this aspect of justice in India. Primarily because of the fact that it is not a direct relation of the blacks being discriminated by the whites. In India the matters are more complex because it is caste A against cast B, cast B against caste C, religion A against B and the series is just endless. In such a scenario it becomes difficult to carry out a comprehensive study but that of course does not mean that the practice is not present. This is one aspect that needs to be looked at.

THE CONDUCT OF THE LAWYERS:

There has to be some kind of control over the conduct of the lawyers. Unfortunately, it is only some lawyers that manage to become popular at the expense of others. This means that it is only these lawyers that get the majority of the cases. What then happens is that these lawyers can not do justice to all the cases and start asking for adjournment for their old cases to be able to trap a new litigant(the other day I was in the court and the lawyer asked for adjournment of a case that was filed in 1983.) So there has to be some kind of check over the conduct of the lawyers. A possible solution would be to restrict the number of cases that are left in the "closing stock" of his cases which means that a lawyer can take up as many cases as he wants to but at the end of a particular period which I would like to call a "legal year" he can not have more than a certain number of cases pending in his balance sheet. The number could also be turned into a percentage wherein not more than a certain percentage of cases would be left unsolved by a lawyer at the end of 1 "legal Year". One more thing that could impose a check would be that if a lawyer has even 1 case pending belonging to a certain year which could be reasonably arrived at from time to time, he shall not be allowed to take up any further cases.

LEGAL AWARENESS:

This is the first and the foremost aspect that effects the dispensation of justice. For a person to assert his rights he has to be first made aware of such rights. Knowledge is power. But one has to be careful here for half knowledge is always dangerous and often fatal. Attention is here drawn to the fact that sometimes people are mis-aware (as opposed to unaware) of their rights which results in greater problems. In a paper by Vasudha Dhagamwar "slavery in modern India" she talks about the custom of dhareecha in the state of Gwalior. Re marriage was an accepted norm and did not have much of a concern with religion. A couple could start living together and declare themselves as man

and wife(and one or both repudiating their previous marriage). To give a legal sanction to the custom, the dhareecha legislation was passed in 1900 which made it obligatory to get a document registered with the government, when such a re marriage was performed. This was when Gwalior was an independent state. In 1948, however, the legislation was repealed. However, ironically enough, these documents continued to be registered with the government. But these documents were not genuine dhareecha documents. In most of these documents it was a unilateral declaration by a woman(who was invariably illiterate)stating that her husband used to ill treat her(which was obviously not considered illegal) and she was, voluntarily, out of her own free will, acting as a maid to the person concerned. Such a person would provide her food clothing and shelter and the woman was obliged not to do anything against his will or to displease him. On the practical level this person used to give a ransom to the husband of such a lady .The sale was considered to be legal because of the fact that it was written on the paper and on top of that registered with the government. Thus the woman dare not approach the court for the sale was legal after all! What, however, I fail to understand is how these documents were registered?

Thus it is not only the fact of being unaware but also of being mis-aware that leads to problems. Steps have, therefore, to be taken to look into this aspect of Access To Justice.

THE STHANIKA NYAYALAYA BILL 2003

The idea of Sthanika Nyayalayas is a well conceived tool to tackle the problem of delays in the courts. If passed, it would go a long way in solving the problems. Due to the delays in decisions, people seem to have lost a considerable amount of concentration in the justice delivery system. The Sthanika Nyalaya Act would , if implemented as intended, bring back this confidence and ensure that people get justice(for the word "speedy" is only a sub set of justice.

The Bill is a well drafted one but does, in my opinion need a few amendments. There is nothing drastic though; it is just a few technicalities here and there.

AMMENDMENTS REQUIRED:

SECTION 2:DEFINITIONS:

Three definitions need to be added.

1.Minor.

2.Person of unsound mind.

3.Abetment of an offence.

SECTION 6 (2):

THE PHRASING OF THE SENTENCE GIVES RISE TO TWO INTERPRETATIONS:

1 That the succeeding term will also be of three years (which seems to be the intended meaning)

2 That a person can be re-appointed only once and can not have a third term.

This interpretation must be done away with. If a Nyayadhikari is doing well as a judge, I see no reason was to why he should not be eligible for a second or a higher re-appointment. More experienced a judge, more easily and effectively can he solve the dispute.

SECTION 13 AND 21 :

If the word “exclusive” is added to make the sentence mean that the Nyayalaya shall have an exclusive jurisdiction over the kind of matters that can be referred to it, two ends would be served.

1 The section would get its intended meaning.
2 There would be no need to add section 21.If the Nyayalaya has an exclusive jurisdiction over the matters referred to it(by virtue of section 13), then obviously no other court has a jurisdiction over such a matter. Thus section 21 would be of no use.

SECTION 14(P):

Experience tells us that lawyers, to win a case can go to any level of hair splitting interpretations of the black letter law, which often results in problems. Thus if the section is phrased as:

“CLAIMS FOR COMPENSATION AGAINST HARASSMENT **BY** AND NEGLIGENCE OF……”

The problem would be set right at the outset itself.

SECTION 18(4)A AND 18(8):

There is a dichotomy between 18(4) A and 18(8). Whereas 18(4) A says that the Nyayadhikari shall pronounce the decision on the same day(if no recording of evidence is required) of the hearing, section 18(8) says that he may do so within 1 week of the last hearing. Now if no recording of evidence is required, the Nyayadhikari may withhold the judgment for a period which may extend up to 1 week, by virtue of section 18(8).But section 18(4) A makes it obligatory for him to deliver the judgment on the same day as the last hearing(by using the word “shall” in phrasing the sentence).In my opinion this could have two possible solutions:

1 Raise the upper limit of time in section 18(4)A to 1 week.

2 Rephrase section 18(8)

“The Nyayadhikari shall pronounce……,within 1 week, if the recording of evidence is required and on the same day if no recording of evidence is required”

and completely do away with 18(4)A.

This would be a better option of the two.

SECTION 19(1) AND SECTION 41:

Both the sections deal with the same thing. In my opinion, 19(1) must be deleted and it must be made obligatory for the district judge to assign reasons for such a transfer (reasons to be available on demand by the chief justice). This would result in minimum corruption and maximum protection of the litigant's interest.

SECTION 25, 26 AND 31:

There is again a problem between sections 25(1) and 26(2). This is also the case with 25(1) and 31.Section 25(1) says that a Nyayaydhikari can not try an offence if it is punishable by more than 1 years punishment. In my opinion second part of 26(2) and section 31 as a while are not required at all because of the fact that their meaning is implicit in section 25(1).The Nyayadhikari can not, anyway try an offence which is punishable by more than one years imprisonment, where is then the need to include these sections when 25(1) already deals with it.

SECTION 41 (3):

The removal must be subject to the approval of the chief justice. This would minimize the play of personal vendetta and maximize the scope of fair decisions. This must also be done keeping in view section 43 which makes such a person disqualified for being eligible to be appointed to any government post or any honorary post. Now, if the removal is based on the vendetta of the district judge, it would be gross injustice towards the Nyayadhikari. It must, therefore be subject to the ratification of the chief justice.

SECTION 44:

Section 13 and 21 give the Nyayadhikari an exclusive jurisdiction over the kind of matters it deals with. So, a matter which is pending in any other court is obviously not in the Nyayadhikari's jurisdiction. If it had been then it could not have been tried by any other court by virtue of section 13.So section 44 is not required.

SECTION (47)3:

In this section we seem to be falling in the trap of one of our enemies-long sentences, difficult to comprehend. The section, in my opinion needs to be redrafted so that the meaning becomes more comprehendible.