



UiTM LAW REVIEW

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UiTM LAW REVIEW

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UNIVERSITI TEKNOLOGI MARA (UiTM)

An Introduction

Universiti Teknologi MARA (formerly known as MARA Institute of Technology) is Malaysia's largest institution of higher learning. It had its beginnings in 1956 as Dewan Latihan RIDA, a training centre under the supervision of the Rural Industrial Development Authority (RIDA).

Nine years later Majlis Amanah Rakyat (MARA) Act, 1965 provided for a change of name from Dewan Latihan RIDA to Maktab MARA (MARA College). The Act also defined a new role for the MARA College – to train Bumiputras (literally it means “the sons of the soil” - ie the indigenous people) to be professionals and semi-professionals in order to enable them to become equal partners with other ethnic groups (ie the former migrants, especially the Chinese and Indians) in the commercial and industrial enterprises of the nation.

In 1967 Maktab MARA was renamed Institut Teknologi MARA (ITM) (or MARA Institute of Technology). In August 1999, the Institute was upgraded to university status and named Universiti Teknologi MARA (UiTM).

As part of the government's affirmative action policies, UiTM provides education and training in a wide range of sciences, technology, business management and professional courses to 56,408 full-time students in 2000. Another 3,156 have enrolled for off-campus courses. In addition, there are 7,725 students in distance-learning and flexible-learning programmes.

The main campus stands on a 150-hectare piece of land on a picturesque hilly area of Shah Alam, the state capital of Selangor Darul Ehsan, about 24 kilometres from the city of Kuala Lumpur.

The Universiti has also established branch campuses in the various states of the Federation: Sabah (1973), Sarawak (1973), Perlis (1974), Terengganu (1975), Johor (1984), Melaka (1984), Pahang (1985), Perak (1985), Kelantan (1985), Penang (1996), Kedah (1997) and Negeri Sembilan (1999).

The Universiti currently offers 184 programmes conducted by 18 Faculties. These programmes range from post-graduate to pre-diploma or certificate levels. More than half of these are undergraduate and post-graduate programmes, while diploma programmes account for an additional 39%. Some of the post-graduate programmes are undertaken in the form of twinning programmes, through collaboration with universities based overseas.

The following 18 Faculties currently run programmes in the University:

Accountancy; Administration and Law; Applied Science; Architecture Planning & Surveying; Art & Design; Business & Management; Civil Engineering; Education; Electrical Engineering; Hotel & Tourism Management; Information Technology & Quantitative Science; Mass Communication; Mechanical Engineering; Office Management & Technology; Performing Arts; Science; Sport Science & Recreation.

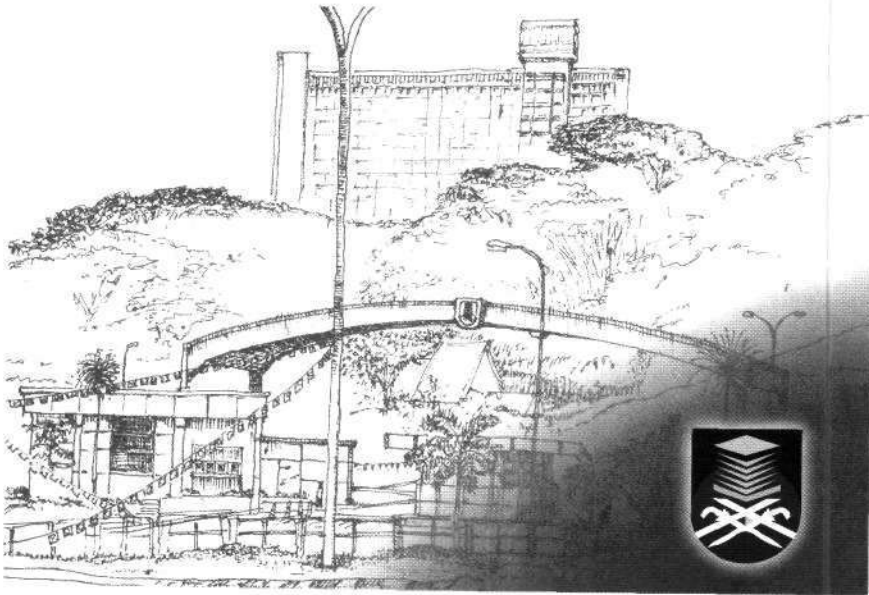
In addition to faculties there are 17 'academic centres' to cater various academic, business, technological and religious needs of the campus community. They are Extension Education Centre (PPL); Language Centre; Centre for Preparatory Education; Resource Centre for Teaching and Learning; Total Quality in UiTM (CTQE); Department of Academic Quality Assurance & Evaluation; Computer Aided Design Engineering Manufacturing (CADEM); Malaysian Centre for Transport Studies (MACTRANS); Text Preparation Bureau; Bureau of Research & Consultancy; Malaysian Entrepreneurship Development Centre (MEDEC); Islamic Education Centre; Centre for Integrated Islamic Services; Business & Technology Transfer Centre.

THE FACULTY OF ADMINISTRATION AND LAW, UiTM

The Faculty of Administration and Law (formerly known as the School of Administration and Law) was founded in 1968. It began as a centre offering British external programmes, the LLB (London - External) and the Chartered Institute of Secretaries (now Institute of Chartered Secretaries and Administrators). The only internal programme offered then was the Diploma in Public Administration and Local Government (DPALG). In 1978 the LLB (London - External) programme was terminated and replaced by the current internal LLB programme. The LLB is a three-year academic degree course based on the structure of the undergraduate law programmes normally offered in the British universities. Unlike most of the British LLB programmes, however, the LLB at the Faculty is conducted on a semester system. In 1982 the Faculty introduced a one-year LLB (Hons) programme towards which graduates of the LLB could advance their studies. The LLB (Hons) is a professional and practice-oriented programme that provides training to students for their career in the legal practice as Advocates and Solicitors. The delivery of the curriculum for this course adopts the method and strategy of simulated or experiential learning. Because of the unique experience it provides to students in their legal training this course has acquired wide recognition and acceptance among the Malaysian public.

The Faculty of Administration and Law enjoys strong connections with the legal profession, particularly the Malaysian Bar, and the industry. It takes pride in continually developing pioneering options in its degree programmes, both at the academic and professional levels. In 1995 the Faculty introduced the degree of Bachelor in Corporate Administration (Hons) to train young and bright Malaysians to hold office as Company Secretaries. In the pipe-line are some new courses - Bachelor of Law and Management (Hons), Bachelor of Administrative Science (Hons), Masters of Law and Executive Masters in Administrative Science.

The Faculty currently comprises some 70 academic staff from both the disciplines of law and administration. It has about 600 students reading for the LLB and LLB (Hons) and 500 students reading for the Diploma in Public Administration and Bachelor in Corporate Administration (Hons). The Faculty admits about 200 students each year.



Main Entrance to Shah Alam Campus

EDITORIAL NOTES

This law journal had a long period of gestation in the Faculty. There were several attempts in the past, by individuals or the faculty collectively, to bring about its parturition. It is no easy task to initiate an academic journal, regardless of the discipline it represents. It demands a high degree of commitment in time, energy and attention. It calls for an intense love of labour for scholarship among a critical mass of the faculty members, either in the editorial board or as article contributors. But, at long last, this journal has arrived.

Many factors led to this successful launch. The recent elevation of this institution to university status created its own impetus. Our strong law programme and its capable teachers demanded, and will benefit from, this specialist forum for academic debate and analysis. There is support within the legal profession and among our many distinguished alumni for such a journal, too. We are delighted by the synergy and collaborative goodwill the notion of a journal has evoked. So, we were able to marshal much expertise and experience to bring out this inaugural issue of the Journal.

Academic faculty at UiTM are part of the worldwide network of academia. We must participate in discussions and debates over issues that are not only of direct academic and professional concern but also of importance to the general public. A journal such as this facilitates reflective and disciplined participation. In doing so, it helps the Faculty, and the University, to undertake its noble role in serving the general community.

A learned journal is one of the major measures by which the weight and prestige of an institution are judged. It reflects the institution's maturity and ability to manage and conduct its specialist discipline. It reflects a confidence among its faculty to offer themselves to be evaluated in the open market place of ideas, and it serves notice of the faculty's readiness to serve the community at large. This Journal, in no small measure, marks the coming of age of the Faculty.

The Journal functions also as a meeting point for law teachers and practitioners who share a common interest in various areas of law. It provides them a source of information on the current and topical issues in their specialised areas. It creates a forum for the exchange of ideas and for engaging in discourse over sometimes intricate and often vexed legal issues. Much is gained by the legal fraternity, as well as the legal system, through such engagements and encounters.

Law teachers, as members of the broader academic community, are aware that it is no longer tenable for them to function solely within their traditional ivory towers, isolated from the reality of the world outside. For career and professional advancement, and for taking their rightful role in the community, no academic can confine

herself to her classroom or departmental audience. She must reach for a wider audience. The recognition (or lack of it) that she gains from her peers, both within and without the discipline, will speak for her standing and credibility in the community, both scholarly and otherwise. This Journal will serve as one channel for the Faculty members to reach that wider audience.

There are relatively few academic legal journals in this country. Most existing legal publications cater for the professional needs of legal practitioners. One ramification of this is that there are few discourses on theoretical and abstract legal issues. Yet these issues are important for the fuller appreciation and development of the law and the legal system, by the legislature, the reform bodies and the courts. This Journal will try to answer this need and stimulate discussions on issues that are of interest and relevance to the academic and broader communities.

The labour and skill required for this Journal to thrive will challenge the staff of the institution and the supporters of this initiative among the profession and the wider community. We hope the Journal sails well in fair winds.

Our wish is that Malaysia's legal profession, its legal academic circle and the many students and practitioners of law in this country and elsewhere will benefit from this forum for analysis and reform. We hope this Journal makes an important contribution to debate on vital legal matters in our society. We hope, too, that our quest for self-expression and critical reflection among the members of the legal academia will be assisted by this Journal. It is with great pleasure and some satisfaction at the completion of this worthy task that we complete this inaugural Editorial.

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LEGAL AID – RIGHT OR PRIVILEGE

by R RAJESWARAN* and DR S SOTHI RACHAGAN**

Introduction

To none shall we delay
To none shall we deny
To none shall we sell justice

Thus, boldly proclaimed the barons of England when they extracted the Magna Carta from King John. It is a commitment that has been made countless number of times, before and since, in virtually every country. Throughout recorded history and in spite of man's inhumanity to man and social inequality, the vow that justice should be made available to all who seek it, irrespective of cost, has been continually echoed. No thinking person of whatever creed or political belief – however narrow or reactionary in outlook – has openly disagreed with this as a basic right of civilized existence.

Equality is the basis of all modern systems of jurisprudence and administration of justice. All democratic countries, therefore, have as one of their fundamental laws, the principle that justice should be available equally to the rich and poor alike. In Malaysia, this principle is embodied in Article 8 of the Federal Constitution which reads, "All persons are equal before the law are entitled to equal protection of the law".

Justice will remain unequal if not all persons are able to have access to justice – an inability caused by economic, social or political deprivation. Legal aid designed to overcome these barriers and cater for the legal needs of deprived persons is a right consonant on the state's declaration of formal equality before the law. However, that right will always remain a privilege, as long as a comprehensive scheme for legal aid is not available.

This article first briefly describes the legal aid services already available in Malaysia and then suggests ways in which a more comprehensive programme for legal aid may be realised.

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Legal aid in Malaysia

The provision of legal aid for the poor has its origins in the Emergency (Essential Powers) Ordinance No. 39 of 1970, which came into force in September 1970 and brought into being Malaysia's legal aid scheme. Before the passing of the Ordinance, legal aid was only available to:

- i) Government servants in cases of legal proceedings connected with their official duties;¹
- ii) Poor persons *in forma pauperis*;²
- iii) Persons charged with criminal offences involving capital punishment.³

The Emergency (Essential Powers) Ordinance was soon replaced by the Legal Aid Act 1971 and by the Legal Aid and Advice Regulations 1970. The Legal Aid Bureau set up under the Act comes directly under the control of the Attorney General. A Legal Aid Council was established, drawn from persons with experience or special knowledge of the workings of the courts and social conditions in Malaysia. The Director is a senior legal officer from the Judicial and Legal Service and to assist him is a Legal Aid Board comprising two advocates and solicitors drawn from a panel maintained by the Legal Aid Bureau.

The Bureau is staffed by government officers and has branches in the main cities and towns in the country. Section 5 of the Legal Aid Act 1971 provides for the Director of Legal Aid to enlist the assistance of advocates and solicitors "who are willing to investigate, report and give an opinion upon applications for the grant of legal aid, to act for persons receiving legal aid or give legal advice under the provisions of the Act".

The number of private lawyers in the country assisting the Legal Aid Bureau presently number about 300. The lawyers are paid a nominal fee and disbursements as provided under the Legal Aid and Advice Regulations 1970. As agents of the Bureau, they are afforded the same privileges and immunity as the permanent officers of the Bureau.

The range of civil cases accepted by the Bureau include family law matters from both Muslims and non-Muslims, including divorce, custody of children, adoption and maintenance, distribution of property of the estates of deceased persons, claims arising out of accidents and matters relating to the Hire Purchase Act 1967 and the

1 Now provided for in Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 (P.U.(A) 203/80), Regulation 20 (3).

2 Subordinate Courts Rules 1980(P.U(A) 328/80 (0.9A,r 1(4) and Rules of the High Court 1980 (P.U(A) 50/80) 0.15, r 18(1) and (2), r 19(1) and r 20. Rules of the Supreme Court (P.U (a) 33/80), r 69, 75(2), r 76(1) and 77(1).

3 The Criminal Procedure Code (F M S Cap 6).

Moneylenders Act 1951. Assistance in criminal matters is restricted to pleas in mitigation except in some cases involving minors.

A stringent “means test” is applied to determine eligibility. The “means test” is two – tiered in that free assistance is given for those with a disposable capital of RM1500.00 and disposable income of not more than RM2000.00 per annum. A second category of assistance is rendered to those with a disposable income of more than RM2000.00 but less than RM7500.00 per annum in that a contribution is levied towards expenditure.

Poor persons *in forma pauperis* can also be assigned counsel under the appropriate Rules of Court, and paid a nominal fee likewise.⁴

Under the provisions of the Criminal Procedure Code (FMS Cap 6), persons charged with criminal offences involving capital punishment are entitled to be assigned a counsel from the ranks of advocates and solicitors by the court, if the accused cannot afford to retain a lawyer. The lawyer is chosen by the court from a list of lawyers experienced in criminal law practice. This list is submitted by the Bar Council to the court. The assigned counsel is paid a nominal fee out of government funds.⁵

The biggest contribution to the legal aid and legal literacy programme for the poor undoubtedly comes from the legal profession itself. Section 42(h) (I) of the Legal Profession Act, 1976 states:

The purpose of the Malaysian Bar shall be [*inter alia*] ... to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors.

To implement this objective, the Bar Council Legal Aid Scheme was officially launched in 1983, initially with financial assistance from the Asia Foundation. The scheme is now fully financed by members of the Bar themselves, who pay a levy of RM100.00 per annum to the centrally operated Bar Council Legal Aid Fund. The Bar Council now has 8,000 members. Applicants for legal aid are required to make a contribution of RM50.00 towards disbursements.

Under the Scheme, there are at present nine Bar Council Legal Aid Centres in the country and, for administration purposes, each centre comes directly under the control of the local State Bar Committees.

4 Above n 2.

5 Above n 3.

The legal aid provided is principally in the form of advice or legal representation in court by volunteer lawyers from the Bar. Although there are more than 8,000 practising lawyers in the country, only about 300 are volunteers.

Legal assistance is given only in cases involving:

- i) Family law
- ii) Industrial accidents
- iii) Employment
- iv) Housing and tenancy matters
- v) Detention under the Internal Security Act, 1960; Public Order (Preservation) Act 1958 (Revised 1983) and Prevention of Crime Ordinance 1959;
- vi) Consumer problems
- vii) Criminal matters
- viii) Problems relating to passports, identity cards, citizenship and birth certificates.

Notable omissions are running down cases and problems relating to squatters. The categories of cases accepted by the Centres under the Scheme may be revised or expanded by the Bar Council Legal Aid Subcommittee from time to time.

Every person seeking legal aid under the Scheme is required to undergo a stringent means test. To qualify for assistance under the Scheme, the applicant must *not* have:

- a) a disposable capital of more than RM500.00 e.g. cars, shares, houses, etc; and
- b) a disposable income of more than RM291.67 per month.

In order to assess the disposable income, the following are deducted from the monthly gross income of the applicant:

- a) RM100.00 personal expenses
- b) RM50.00 for each dependent's expenses
- c) RM100.00 for rent.

Members of the Bar who volunteer for service at the Legal Aid Centres render their services free of charge. Disbursements incurred by them are reimbursed. Each volunteer is required to be on duty at the relevant Legal Aid Centre or clinic for a few days in a year to attend to applications for legal aid.

Legal aid and legal literacy programmes are also organised on an ad hoc basis by Consumer Associations, women's organisations, the Association of Women Lawyers, trade unions and political parties.

Redefining The Scope of Legal Aid

Ensuring equal protection before the law calls for a continuous review of the measures to be adopted. Legal aid must therefore be viewed as a dynamic and not a static concept. It must also meet the peculiar needs of each country. In times past, legal aid was simply a system of providing legal advice and representation to people who could not afford to buy these services from the private profession. This was a function that the legal profession was comfortable to play and consequently there was at least unanimity of opinion. However, such an approach is a half-measure that does not serve to address the fundamental causes of the problem. It is necessary therefore to adopt a holistic approach and devise a comprehensive programme to meet current and future needs. It is here contended that a comprehensive legal aid programme must *inter alia* include the following:

- a) Literacy and education
- b) Advice
- c) Representation
- d) Research into problem areas
- e) Campaign for reforms

Legal Literacy and Education

The campaign for legal literacy has hitherto been confined to sporadic efforts, one-off talks and forums. A comprehensive plan will call for a scheme for the spread of legal literacy to the whole population. A large section of the population can be reached through an appropriately designed legal studies course at High School level – as subjects at “O” level or “A” level. This calls for a review of our secondary school curriculum. The non-school population can be reached through government organisations such as the Department of Information and the Bahagian Kemajuan Masyarakat (KEMAS) (Community Development Division), or through co-operation with such non-governmental organisations as trade unions, consumer associations, women’s organisations and the mass media. It will also be necessary to devise a systematic programme for the training of persons who will be involved in legal literacy and education. Legal literacy means, in common parlance, knowing the fundamentals of law. The assumption is that if the under-privileged know what the law has to offer they can improve their socio-economic and political condition. This is a simplistic view, a single-dimensional conception of legal literacy. Legal literacy must be viewed and defined from the purposes it must serve – as the process of acquiring critical awareness about rights and the law, the ability to assert those rights, and the capacity to mobilize for change. In providing legal literacy, we have to explore the role of lawyers as agents of legal literacy and come to terms with a number of issues. Law has to be viewed from the perspective of, and significance for, the deprived, rather than those of the practitioner. Often, the lawyer cannot be the sole or even primary agent and communicator, and to help overcome the “us” and “them” dichotomy, it will be necessary to engage community-based “paralegals” to bridge the gulf between lawyers and those for whom legal literacy programmers

are intended. Legal literacy will thus have to become “deprofessionalized”. Important questions about the design of the programmes, the techniques and strategies used, and the strengths and weaknesses that emerge when lawyers play leadership roles in legal literacy have to be examined.

Advice

The primary function of legal advice should be the identification and resolution of problems faced by individuals. The tendency for legal advice centres to determine whether the complaint has any “legal merit” often results in persons being denied a resolution of their problems. The experience of non-governmental organisations maintaining advice bureaux is that extra-legal means, such as letters to the managing director of a firm or corporation, a letter to the press or the appropriate government agency, help resolve many problems which strictly lack any “legal merit”. It is such an approach which recommends that there should be a two-tiered structure of generalist and specialist advice centres:

a) *General advice*

The first priority is to increase the provision of generalist advice, so that everyone has access to a local centre offering basic advice on any query raised. This must be done as an addition to, rather than as a substitute for, specialist legal aid centres. General advice is useful in itself and a vital point of contact with the legal system. The distribution of such generalist advice centres will depend on a number of factors, chiefly population distribution and the needs of particular communities.

b) *Specialist advice*

Specialist advice in such fields as debt counselling, consumer problems, housing, welfare and matrimonial matters are best provided in centres which specialise in these areas and to which are referred cases from the generalist advice centres. Specialist centres are cost-effective but by virtue of their accessibility are likely to generate increased demands for their services. These specialist centres can be located at the premises of non-governmental organisations and can rely on the assistance of volunteers, but there will, however, have to be a core of salaried workers.

Legal Representation

If all people cannot obtain legal representation when they need it, then all people are not equal before the law; and the legitimacy of the whole system of justice is brought into question. It is axiomatic that a comprehensive legal aid scheme must provide assistance to needy persons requiring representation in all matters – both criminal and civil. Equal access to legal representation is important in every area of the law. Hence, the current scheme confining such assistance to particular actions only has limited merit. The most glaring omission in this respect is the failure of

the government Legal Aid scheme to provide representation for those who, in criminal actions, do not plead guilty. There is ample evidence from studies in many jurisdictions that unrepresented persons are short-changed at each stage of the technical procedures and processes of the court's organisational system:

- Intake and detention – arrest, processing, release, imprisonment, magistrate appearance and the plea
- Screening
- Negotiations
- Pre-trial proceedings
- Determining competence
- Trials – evidentiary rules – instructions to the jury
- Testimony
- Jury process and outcome
- Commitment
- Probation
- Discretion

The few but significant studies conducted in Malaysia suggest that this is true of the Malaysian situation as well.⁶ It is a grave injustice to deny representation to persons charged with crime. An aspect of legal aid that has often been glossed over is the antagonism that certain area of legal aid faces from the private profession. Where legal aid is by way of charity, or where a *judicare* model is used (i.e. the private profession is paid out of state funds to provide legal aid services), the private profession has remained generally supportive. However, the private profession is often antagonistic about groups of salaried lawyers and paralegals encroaching on areas that provide the bread and butter, and some of the jam, of the private profession. This is especially so in the area of legal representation. The legal profession, long a monopoly of those with practising certificates, will have to come to terms with the fact that such monopolies are inimical to the interests of the underprivileged.

Research into problem areas

The plight of the underprivileged is often ignored simply because data on their situation is not available – the call for change is often an admonishment of unspecified individuals and a restatement of worn-out platitudes. In the field of criminal justice, for instance, there is an absence of comprehensive data on arrests, detention, bail, trial and sentencing that reveal the nature and extent of the problem. Data gathering is a task that the Ministry responsible for Justice should undertake in conjunction with local faculties of law and the Bar Council. Such research into

6 See for instance GA Nijhar, "Position of the Unrepresented Accused in the Subordinate Court", LL.M. Thesis, University of Malaya, 1978, and Mimi Kamariah Majid and Lee Oi Kuan, *Malaysian Law on Bail*, (Malaysian Law Publishers, K.L. 1986).

the inequities that exist in the judicial system will help bring about structural changes that can benefit many thousands of persons. A comprehensive legal aid scheme must then involve systematic research into problem areas.

Campaign for reform

Every day, government agencies are making decisions which will affect the environment, utility rates, food processing and quality, land used, taxes transportation, health care, employment, job safety, rent, schools, crime, prisons, civil liberties and rights, and many other conditions of social co-existence now and into the future. Surrounding these agencies are lobbyists and advocates of special economic interests. Using numerous combinations of the carrot and stick, these pressure groups, more often than not, get exactly what they want. It is therefore a crucial function of those dedicated to improving the plight of the underprivileged, to campaign for reform that will benefit the interests of those least articulate. This is a task that many non-governmental organisations have already embarked upon. Associations of lawyers in Malaysia, the Bar Council and other professional bodies can usefully contribute their expertise to extend these efforts.

Increasing Access to Legal Aid Facilities

The public perceives our legal system as a complex, slow and expensive mechanism that is not always fair. It is certainly not perceived as good for everyday use. We should aim to achieve a legal system that is simple, quick, cheap and fair and which can be used by ordinary people to sort out ordinary problems. In a criminal action, the minimum requirement is to ensure that no accused is denied legal representation because he or she cannot afford the cost. In non-criminal matters, the public need for legal services falls into two parts – first, enabling a person to identify the problem and, if he judges appropriate, to choose a legal solution; and secondly, enable a person to pursue that chosen legal solution. Access to the legal system, then, is a fundamental principle and the aim of legal aid should be to ensure that this access remains a viable option for all persons. Unfortunately, many persons in need of legal aid facilities remain unable to gain access to them.

Access to legal aid can be improved in a number of ways and regard will have to be paid to the following:

Spatial distribution

The current distribution of legal aid shows a marked concentration in the urban centres of the more developed states. After 30 years of existence, the government's Legal Aid Bureau has its offices located in 17 urban centres – each of the state capitals and in Muar, Taiping, Raub and Kuala Lumpur. The Bar Council's legal aid work is largely in the urban areas – a reflection of the distribution of the members

of the Bar rather than of the need for such services. Legal aid centres need to be distributed so that underprivileged areas receive priority.

A cultural chasm

It is difficult for well-intentioned middle and upper class individuals to understand why their sincere efforts to provide assistance to the poor often finds no takers. The Bar Council has had to, in several instances, discontinue its legal aid services even in poorer neighbourhoods. The “lack of response” could have much to do with the way in which the delivery system is organised and the personnel who man these centres. Working with local groups and volunteers who have contact with the local population and attending to the actual location and layout centres can produce significant increases in user response.

Lack of knowledge about the scheme

Legal aid cannot help people unless they know that the facility exists. Unless the scheme is well publicised, there will continue to be an apparent lack of demand. In 1988, the Selangor and Federal Territory Consumers’ Association conducted a sample study of the households within a one mile radius of its office in Kuala Lumpur to determine awareness about its programmes which include a Complaints Bureau – a disheartening conclusion was that 37% of households were unaware of the exact location of its office! It is likely that such startling findings will hold true for many service centres and schemes. It is thus necessary that the legal aid scheme have an adequate budget allocation for publicity and a systematic programme for publicising the available services.

Falling eligibility

The government’s legal aid scheme and that of the Bar Council each specify a means test. Without any clear commitment to update the means test periodically, eligibility for legal aid will continue to fall. There currently exists no data on the number of persons, or even an estimate of the percentage of households, who would be eligible for aid under the present criteria. Such data is crucial in determining whether the means test is serving its purpose. There are indications that both the tests disadvantage certain categories of persons – pensioners and retired persons who have drawn on the Employees’ Provident Fund (EPF), and persons who place their savings in particular forms like fixed deposits. It will be prudent to first determine, as a matter of policy, what percentage of the population should be entitled to legal aid, and then derive means tests, which more accurately serve to screen-in those within this limit. Only then can appropriate targets and performance indicators be evolved.

The statutory charges

Certain categories of legal aid recipients are required to contribute towards the expenses incurred in their legal representation. These clients must be fully informed about the legal costs they would have to incur. Information has to be provided at the start of the case and before a final settlement is reached. Clients need to be able to control the costs and conduct of the case throughout the proceedings. Hence, clients need to be provided with regular reports showing them the costs incurred to date.

Failure to provide a service in areas of social welfare law

Although legal aid claims to overcome the cost barrier, it does not overcome any of the other barriers which people encounter in using lawyers. The current scheme does very little to inform people of their legal rights and it does not prevent them from being intimidated by the ideas of going into a lawyer's office. Few lawyers' offices are located in deprived areas where the poor would have need of them, and lawyers receive little training in social welfare law. The problem is circular – the poor do not think of using lawyers for advice with their problems, hence lawyers do not develop skill and expertise in these areas, and services are not available for those wishing to use them.

Funding Legal Aid and Ensuring Access to Justice

A comprehensive legal aid scheme that ensures access to the courts for all persons will invariably involve a substantial increase in funding. It is inevitable that a significant portion of this, especially that portion which is directed at the poorest section of our population, should be met out of public funds. Yet, legal aid cannot be an unconditional blank cheque from the taxpayer. A commitment from non-government sources is thus necessary.

The legal profession in Malaysia is the only profession that requires its members to make a compulsory financial contribution towards assisting the less fortunate in Malaysia society. However, it appears that a large portion of the funds thus collected have gone toward the creation of an accumulated fund which, at the end of 1990, was in excess of RM700,000. The net profit from the Bar Council's Legal Aid Scheme for 1990 alone was RM108,000. However, when the scope of legal aid is made wider and the provision of legal aid is better organised, these accumulated funds will be quickly depleted and there will be a need to increase the funds available each year.

The Bar Council's Scheme also has a number of other weaknesses. The number of lawyers volunteering to do legal aid work is small. There is also a lack of commitment from the larger legal firms. A scheme will have to be devised that will

costs; instead, costs are increased to cover marketing and administration, and are spread over more people. It is also very important to prevent any abuses of the insurance industry creeping into a scheme aimed essentially for social reasons.

Conclusion

Legal aid is already offered by the government, the Bar Council and a number of other non-government organisations (NGOs) including the consumers' associations, the women's associations, trade unions and political parties. A blueprint for legal aid must therefore be chartered not only by the Bar Council but also all the current providers and other interested parties. Unless a national blueprint is drawn-up and implemented there will continue to be inadequate and uneven provision of services and the organisations (including the Bar Council) which commit their scarce resource to this worthy cause will be unable to rationalise their efforts. Such a blueprint will have to demarcate the role that the government will play and that which is to be undertaken by the other organisations.

A comprehensive scheme for legal aid calls for the immediate formation of a national body to chart the scope of services to be provided and the channels and manner of delivery. The required database has to be built-up and continuously up-dated. The Bar Council should take the lead to form the national body. Not only will a basic need of less fortunate Malaysians be addressed but a more compassionate Bar will then emerge to play a meaningful role in Malaysian society. Only then can we truly say that Legal Aid in Malaysia is every citizen's right and not a mere privilege. Only then can we proclaim that to none shall we deny justice.