

Judicial Contribution for Victim Justice & Rights: An Overview

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Abstract

With the goals are to develop security and Rights of victims as well as justice to victims and improve to positive attitudes with criminal justice system. The present study focused on the legal services to Sagar district of Madhyapradesh and on the basis of findings, suggested some ways and means to update free legal services as contribution of criminal justice system.

Keywords: Victim, Victim Justice, Victim Rights, Legal Aids.

Introduction

It is very relevant to mention the main cause to the selection of the research paper title on judicial contribution for victim justice and rights with special reference to Legal Aid Services in Sagar District of Madhya Pradesh. The idea comes to author mind on the same theme during the course of honorary services performed as District Co-ordinator, Madhya Pradesh Human Rights Commission for Sagar District.

The victims of crime were a forgettable identity in the Criminal Justice System until 1970. In present scenario, along with India, several countries realized and need to provide assistance and free legal services to victims. The concept of justice to victims has been provided under the constitution of India and various provisions of UNO instruments of human rights stated to underline the victims.

Indeed, justice to victims, the concept of free legal services under the constitution of India has been formed. In India, free legal services delivered to the victims under the provision of National Legal Service Authority (NALSA) and under the State Legal Service Authority (SALSA) in each states. The goals are to develop security and rights of victims as well as justice to victims and improve to the positive attitudes with criminal justice system.

The Constitutional Paradigm on the Legal Aid Services:

- The 42nd Amendment Act, 1976 to the Constitution, inserted a new provision free legal aid under Article 39A. The Constitution of India under Article 39-A mandates free legal aid to the poor and weaker sections of society.
- **Article 39A - Equal Justice and Free Legal Aid :** The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free

legal aid, by suitable legislations or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. Besides the Constitutional mandate and the LSA, there are some important statutes, which have also recognised legal aid services as a matter of legal right to a victim and an accused/ defaulter.

- The **Preamble** of the Constitution of India secures to all the citizens, Justice – social, economic and political. **Article 39 A** of the Constitution of India provides for free legal aid to the poor and weaker sections of the society, to promote justice on the basis of equal opportunity. **Articles 14 and 22(1)** of the Constitution also make it obligatory for the State to ensure equal protection of law.
- In order to fulfil the above Constitutional promises, the **Legal Services Authorities Act 1987** was enacted by the Parliament for providing free and competent legal services to the weaker sections of the society.
- In order to implement the provisions of the Act, the **National Legal Services Authority (NALSA)** has been constituted. The Chief Justice of India is the Patron-in-Chief and the senior most Hon'ble Judge, Supreme Court of India is the Executive Chairman of the Authority.
- Free legal services under LSA Act are available to a person belonging to Schedule Tribe and Schedule Caste, woman, child, victim of human trafficking, differently abled person, industrial workman, and person in custody in a protective home and the poor.

The Statutory Parameters of free legal aid services in India

Legal aid has been recognized as a fundamental right under articles 21 and 39-A of the Constitution of India. In consonance with the constitutional goal the some of the statutory parameters have been implemented to provide legal aids to disadvantaged group of society in certain contingencies.

- **The Civil Procedure Code, 1908** : Order 33 of the CPC enables an indigent person to institute suits, before a civil court, without requiring such a person to pay the court fees.. Further, where the person is unable to make such arrangements due to various reasons, civil court has the discretion to assign a legal practitioner to such indigent person.
- **The Criminal Procedure Code, 1973** : According to Section 304 of the Cr PC, an indict person must be provided with legal services of a legal profession at the expense of the state. It is an obligation upon the state to ensure the compliance of the provision during pendency of cases before the Court of Session.
- **The Legal Services Authorities Act, 1987** : Further, in order to accomplish the objectives encompassed in Article 39A of the Constitution, the LSA was implemented. The Legal Services Authorities Act, 1987, as amended by the Act of 1994, which came into force on 9 November 1995, aims at establishing a nation-wide network for providing free and comprehensive legal services to the weaker sections. It makes it obligatory for the State to ensure equality before law and a legal system.
- **National Legal Services Authority (NALSA)** : National Legal Services Authority was constituted on 5 December 1995. According to Section 3(1) under the Chapter II of the Act, the Central Government is instructed to constitute a body at the National level known as the National Legal Services Authority, to exercise powers and perform functions conferred on it or assigned to it under the Act.

- **Supreme Court Legal Services Committee:** The Supreme Court Legal Services Committee has been enacted under the Legal Services Authorities Act, 1987 for the effective rendering of justice in the apex court. If a person belongs to the poor section of the society having annual income of less than Rs. 1.25Lac or belongs to Scheduled Caste or Scheduled Tribe, a victim of natural calamity, is a woman or a child or a mentally ill or otherwise disabled person or an industrial workman, or is in custody including custody in protective home, he/she is entitled to get free legal aid from the Supreme Court Legal Aid Committee.
- **State Legal Services Authority: SLSA:** In every State, State Legal Services Authority has been constituted to give effect to the policies and directions of the NALSA and to give free legal services to the people and conduct Lok Adalats in the State. Hon'ble the Chief Justice of the respective High Court who is the Patronin-Chief of the State Legal Services Authority heads the State Legal Services Authority. A serving or retired Judge of the High Court is nominated as its Executive Chairman.
- **District Legal Services Authority: DSLA** In every District, District Legal Services Authority has been constituted to implement Legal Services Programmes in the District. The District Legal Services Authority is situated in every District and chaired by the District Judge of the respective district.
- **Taluk Legal Services Committee:** The State Authority may constituted a Committee, to be called the Taluk Legal Services Committee, for each Taluk or Mandal or for group of Taluks or Mandals to implement legal services in Tahsil place.

Eligibility criteria under the Free Legal Aid Scheme

The NALSA has been created at the national level to keep an eye on and assess the implementation of legal aid services that are provided under the LSA. According to the LSA, State Legal Services Authority (hereinafter SLSA) in each state, the Supreme Court Legal Services Committee (hereinafter SCLSC), the High Court Legal Services Committee (hereinafter HCLSC) at each high court, DSLA at district level and Taluka Legal Services Committees (hereinafter TLSC) at Taluka level have been constituted to give effect to statutory provisions, policies and directions of the NALSA.

Free legal services under the provisions of the LSA, to the eligible people, are provided for filing or defending a case. These benefits are available to some specific strata of society such as, person belonging to Schedule Tribe and Schedule Caste; woman, child, victims of human trafficking, disabled person, industrial workman, and person in custody in a protective home. Legal aid services can also be approved in cases of public importance.

Contributions of the Judiciary

The Supreme Court of India made an ardent announcement with regard to the rights of the poor and destitute people in judgment of Hussainara Khatoun where the petitioner conveyed to the notice that most of the trials have already experienced the punishment much more than what they would have got had they been convicted without any delay. The delay was triggered due to unskillfulness of the persons convoluted to engage a legal counsel to defend them in the court of law and the main reason behind their inability was their poverty. Thus, in this case the Supreme Court pointed out that Article 39-

Emphasized that free legal service was an inalienable element of reasonable, fair and just, procedure and that the right to free legal services was implicit in the guarantee of Article 21.

Objectives: The basic objective of the research is to identify impediments in respect of Legal Aid Services the study achieve the following objectives :

1. To study the existing law relating to legal aid system.
2. To examine the functioning legal Aid Services provided by DLASA.
3. To critically examine the commitments and competency for providing legal aid services.
4. To enhance the quality of services of the DLASA provided under the scheme.

Methodology: The methodology used in accomplishment of this research paper on the basis of ground level experiences working as Human Rights Activist.

Participant and Nonparticipant observation, secondary sources of data used in this study. Author examined also news papers reporting on the problem of issue with legal aid services.

With the goals, the present study focused on the free legal services to Sagar District, Madhya Pradesh and on the basis of findings, suggested some ways and means to update free legal services as contribution of criminal justice system.

ISSUES HIGHLIGHTED

- **Lack of Trust:** The report highlights that people do not have much faith and confidence over the quality of the services offered under the legal aid system.
- **Corruption:** Although the services offered are free but Legal Aid Counsels often demand money during the court proceedings
- **Low Quality:** As per the report, Judicial officers have rated overall skill of LAC as of low quality as compared to a private lawyer.
- **Ad-hoc Engagement:** Currently, the engagement of LAC is usually on an ad-hoc basis. Due to this LAC can withdraw from an aided case at anytime and then, the beneficiaries had to go through the painstaking task of retelling their case history to the newly allotted LAC
- **Paucity of Panel Lawyers:** There is availability of just one legal aid lawyer per 18000 populations.
- **Illiteracy of Beneficiaries:** Most of the beneficiaries do not have procedural knowledge about the functioning of the courts and after few hearings, they often stop coming to court.

Suggestions:

- Legal Services Campus should be re-modelled in such a manner that beneficiaries are connected to the welfare schemes also to which they are entitled.
- Educate the masses via publications in vernacular languages and other media.
- Legal Aid Advocates should themselves deal with the case.
- They are not supposed to delegate the work to their untrained or budding junior advocates.
- Increases honorarium of LACs on par with private cases.
- LASs should be made full time.

Reference:

1. DLSA Regulation 2000.
2. Hussainarakhation Vs State of Bihar(1980), Section 98
3. International Journal of Law and Policy review, Vol 2, July 2012.
4. Legal Services Authority Act 1987, Section 2 (1)a
5. The Constitution of India, Article 39A & 14, 22(1).
6. The Code of Criminal Procedure, 1973, Section 304
7. The Code of Civil Procedure, 1908.
8. The SC Legal Services Code, 1996.