

A Study on the Legal Aid Services-Provisions and the Defence Legal Aid Scheme

Clara Dcosta

Student, SNTD Law School

ABSTRACT

India is regarded amongst the top countries in the Asian continent in terms of the recent technological, economic developments. The country with the most population is still striving to get rid of illiteracy which is now a major problem faced by the rural population in the country. Legal Aid Defense Counsel Scheme 2022 FOR PROVIDING LEGAL AID, ASSISTANCE & REPRESENTATION IN CRIMINAL MATTERS IN LINE WITH "PUBLIC DEFENDER SYSTEM" aims to provide legal aid to poor and needy in criminal justice system. The scheme aims at providing legal aid, assistance & representation in criminal matters in LINE with a public defender system. At present, Assigned Counsel System of dispensation of Legal Aid is being followed in India. This will create institutional capacity to effectively provide Legal Aid to poor, needy, and poor in the criminal justice systems. To have a successful legal aid movement in India, the government needs to take appropriate steps by spreading awareness and educating the people about their basic fundamental rights.

Keywords: Legal Aid, Defence Council Scheme 2022, National Legal Service Authority

Introduction:

The Indian sub-continent is regarded amongst the top countries in the Asian continent in terms of the recent technological, economical developments. Right from our Independence in the year 1947 to the current 2023 India has come a long way surpassing the trials in every field. The metropolitan cities in the country amount to the generation of the major percentage of GDP (Gross Domestic Product) of the country. Along with being the country with the most population, India is still striving to get rid of illiteracy which is now a major problem faced by the rural population in the country.

Even the urban areas still face the same issue wherein people are cheated easily as they lack the basic awareness regarding the legal functioning of the country. Even in today's 21st century despite having the monetary means people are deprived of justice due to a lack of legal awareness. In situations wherein people have awareness, they do not have the monetary means to appoint a legal counsel in order to get justice.

Article 14 of the Indian constitution expresses that every person shall be treated equally before law and ensures equal protection of law to everyone irrespective of religion, caste, race, sex, or place of birth" Article 22 (1) states that whoever being arrested cannot be denied the right to consult and to be defended by a legal practitioner of his/her choice, and there is a basic principle of law that should be followed, that is, Audi Alteram Partem, that no party shall be left Article 39a – 42nd commitment on the State to give legal aid to guarantee equal justice for all citizens. Legal Aid is characterized as "such aid" as might be

given by the state which comes under the rules and regulations of the Legal Services Authorities Act, 1987

Justice Uday U. Lalit, Supreme Court Judge and the Executive Chairman of National Legal Services Authority while shedding light on the fact that the overwhelming majority the aid offered said that the good quality legal aid must be ensured to make people have faith in the legal aid system. There have been many additions and amendments to the functioning of Legal Aid from the year 1987 to 2023, let us take a look at the same in more depth.

Background:

After Independence, a lot of the legal matters, provisions that were established by the Colonials proved the injustice done by them to common people. As India moved further embracing the freedom, the less fortunate were often deprived, cheated of their rights. The Legal proceedings turned out to be expensive and time consuming thereby creating the valley between justice and the downtrodden. To curb this many states throughout the country started the Legal Aid Scheme. The 14th Law Commission Report on Reform of Judicial Administration published in the year 1958, in Chapter 27 discusses the various provisions for legal aid.

It mentioned the records of criminal occurrences in India, analysed structures in different countries, highlighted the significance and necessity of providing the free legal resources and made recommendations for the aid system that relies on the profession of law The Bombay Legal Aid society was credited in the 14th Law Commission Report for bringing attention of the Government of India towards the need for Legal Aid. The Report stated that equality before law necessarily involves the concept that

“All parties to a proceeding in which justice is sought must have an equal opportunity of access to the Court and of presenting their cases to the Court”¹

Therefore, in the year 1971 Hon’ble Justice P.N. Bhagwati was appointed as chairman of a committee that was formed to emphasize the role of judges in providing justice to all and working of the different committees of legal aid. In the year 1980, a Council at the was comprised to regulate and oversee Legal aid programs all throughout the entire country under the Chairmanship of Hon. Justice at that time a Judge of the Supreme Court of India Mr. P.N. Bhagwati . This Panel came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and began checking Legal Aid exercises all through the country. The beginning of Lok Adalats added another part to the system of Justice of this nation and prevailed with regards to giving a beneficial discussion to the disputants for placating settlement of their debates. In 1987 Legal Services Authorities Act was sanctioned to give a legal base to Legal Aid programs all through the country on a uniform example. This Act was finally enforced on 9th of November, 1995 and the National Legal Services Authority was constituted on 5th December, 1995.

Provisions mentioned in The National Legal Services Authority Act 1987

Section 12 in the Legal Services Authorities Act, 1987

12. Criteria for giving legal services.—every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is—

- (a) A member of a Scheduled Caste or Scheduled Tribe;
- (b) A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;

¹ <https://oslsa.nic.in/about-us/>

(c) a women or a child; 1[(d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);] 1[(d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);]"

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) An industrial workman; or

(g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or

2[(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.]²

Section 2(1) defines the 'court' as a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions. As per section 2(1)(c) 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.³

The fundamental center of the Legitimate Administrations Specialists Act 1987 is the hierarchical legal service institutions in the district, state and central, criteria for providing legal aid, Lok Adalat and free legal aid. The progressive Legal Aid System in India exists at three levels they are:

1. National Legal Service Authority(NALSA) and Supreme Court Legal Services Committee (SCLSC)
2. State Legal Service Authority (SLSA) and the High Court Legal Services Committee (HCLSC)
3. District Legal Services Authority(DLSA)⁴

Free Legal Aid

The Article 39A of the Indian Constitution states that, The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and will, specifically, give free legal aid, by reasonable regulation or schemes or in differently, to guarantee that valuable open doors for getting equity are not denied to any citizen by reason of economic or other disabilities.⁵

Article 14 and Article 22(1) additionally elevate the state to guarantee fairness under the steady gaze of the law. Free legal aid strengthens the idea of the constitution to see every individual be equal and to provide necessary legal services to the poor and vulnerable group.

Provisions under free legal aid are:

1. Advice on any legal matter.
2. Payment of all charges in connection with legal proceedings.

² <https://indiankanoon.org/doc/81155499/>

³ The Legal Services Authority Act 1987

⁴ Ajayan, A. (2023, February 1). Legal Aid. Retrieved from <https://academylawreview.in/about-legal-aid/>

⁵ THE CONSTITUTION OF INDIA- <https://www.me.gov.in/Images/pdf1/Part4.pdf>

3. Providing a lawyer to carry out legal proceedings.
4. Procurement of certified copies of legal documents.
5. Preparation, printing and translation of legal documents.

Lok Adalat

The association of Lok Adalat goes under Article 19 of the Legitimate Administrations Specialists Act 1987. All central, state and district legal service authority conducts Lok Adalat. It acts as an Alternative dispute resolution system. It was under the Legal Services Authorities Act 1987 it accepted its legal status. They settle cases which are pending or the cases that haven't been brought before any court of law.⁶

Legal Aid Defense Counsel Scheme 2022 FOR PROVIDING LEGAL AID, ASSISTANCE & REPRESENTATION IN CRIMINAL MATTERS IN LINE WITH “PUBLIC DEFENDER SYSTEM”

While considering the Requests for Grants (2022-23) of the Department of Justice by the Department Related Parliamentary Standing Committee (DPRSC) on Private, Public Complaints, Regulation and Equity saw in its 116th report that:

“NALSA has recently completed 25 years of its establishment; accordingly, it is also the right time to ponder over reforms which are required in NALSA and legal aid movement in India. Majority of Indians are eligible to receive legal aid, but the number of people actually receiving legal aid is a miniscule percentage of those entitled. In the previous chapter, the Committee has already recommended a significant increase in NALSA's budget and expects NALSA to make best use of it in performing its assigned mandate.”⁷

At present, Assigned Counsel System of dispensation of Legal Aid is being followed in India. Under the said framework, cases are assigned to panel lawyers by Legal Services Establishments. Such Board attorneys, to whom cases are allocated, additionally have private practices, and thus, they don't only commit their opportunity to the lawful guide matters. Their accessibility and availability frequently remain a problem when it comes to prompt client consultation and case updates for those seeking legal aid.

There are very few instances in which beneficiaries have been observed being harassed by lawyers or having fees demanded from them. In the expressed course of reinforcing and making legitimate administrations more proficient, NALSA considered embracing another legitimate guide conveyance based model for example 'Legal aid Defense Counsel System' for demonstrating legitimate guide in criminal matters.

NALSA, chose to carry out LADCS as pilot project in 17 states/UTs yet the equivalent was made useful in 13 states to be specific Andhra Pradesh, Chhattisgarh, Delhi, Gujarat, Jharkhand, Karnataka, Kerala, Maharashtra,

According to every model established on providing legal aid, there was no provision earlier for the defense side which is now being brought into being. As conceived, Legal Aid Defense Counsel System

⁶ Nourien Nizar (September 2021) - LSAA 1987 an overview via The Law Corner

⁷ <https://www.kelsa.nic.in/>

includes full time commitment of legal counselors with emotionally supportive network. The said unit manages legitimate guide work in criminal matters at the District HQ, where it is laid out.

Dependent upon attainability, the administrations might be reached out to Talukas or Outline Courts. At first, it was bound to cases before the Sessions Court, and presently it will be extended to all sorts of criminal courts with Legal advisors connected in that not permitted to take any private cases. This will create institutional capacity to effectively provide legal aid to poor and needy in criminal justice system.

A portion of the apparent benefits of the Legal aid Defense System opposite doled out counsel framework might be referenced as follows:

- Expansion in Accessibility and availability of Legal Aid Defense counsels,
- Effective and efficient representation by experienced lawyers,
- Timely and lively Client Consultations,
- Effective observing and coaching of legally supported cases,
- Proficient administration of lawful guide work in criminal matters,
- Enhanced responsiveness leading to updating of legal aid seekers about the progress of their cases,⁸
- Guaranteeing responsibility with respect to the Legal guide suppliers. At the principal case, the Legal Aid Defense Counsel System was imagined to be carried out on a pilot project reason for giving lawful guide in criminal matters in Sessions Courts in a few districts. After its success as a pilot project, it is being extended to other districts and to all criminal courts including Courts of executive Magistrates.

Objectives:

- To give subjective and able lawful administrations in criminal matters to every single qualified individual.
- To oversee and execute legal aid framework in proficient way in criminal matters.

Scope of Work:

Legal Aid Defense Counsel Office will manage legal aided matters in criminal matters of the District or HQ, wherein it is laid out. It shall be providing legal services from the early stages of criminal justice till appellate stage, and the same shall include visits to jails from catering to the legal needs of unrepresented inmates.

At first it will not be managing all kind of civil matters and instances of complainant, matters forthcoming before Juvenile Justice Boards/CWCs, wherein present insight task framework (Panel Lawyers) will continue to be operational for the purpose but panels shall be resized according to work based model.⁹

The accompanying end to end lawful administrations will be given through the Legal Aid Defense Counsel Office:

- Legal Advice and backing to all individualities visiting the office,

⁸ (KERALA STATE LEGAL SERVICES AUTHORITY, INDIA-[<https://kelsa.gov.in>],n.d.)

⁹ <https://kslsa.kar.nic.in/>

- Representation/ Conducting trials and prayers including all eclectic work in all felonious courts similar as Sessions, Special and Magistrate Courts including administrative courts,
- Handling Remand and Bail work,
- furnishing legal backing at pre-arrest stage as per need and also in agreement with NALSA's scheme for furnishing similar backing,
- Any other legal aid work related to District Courts or as assigned by the Secretary, DLSA, Periodic visit of incarcerations of the quarter under the guidance of the Secretary, DLSA.

Code of Ethics:

Personnel engaged in the office of Legal Aid Defense Counsel shall observe the following law of ethics

- No labor force shall act in any matter in which he she has a direct or circular particular or fiscal interest.
- No labor force shall consciously expose or use, whether or not for the purpose of financial gain, any information that he/she attained, entered or acquired during the fulfillment of his/ her sanctioned duties and which isn't available to members of the general public.
- No labor force within the office of Legal Aid Defense Counsel shall make use of his/ her office or employment for the purpose of promoting or flashing any outside exertion.
- No labor force within the office of Legal Aid Defense Counsel shall engage in any outside exertion or act as an independent guru.
- No labor force within the office of Legal Aid Defense Counsel shall solicit, agree to accept or accept, whether directly or laterally, any gift, favour, service, or other thing of value under conditions from which it veritably well may be sensibly supposed that similar gift, administration, or other thing of significant worth was handed or presented for the provocation of affecting him her in, or compensating him her for, the release of his/ her authority scores.
- Legal Aid Defense Counsel shall devote his/ her full time to his/ her duties for the office of Legal Aid Defense Counsel and shall not engage in private practice of law during the term of employment.
- Every labor force of the office of Legal Aid Defense Counsel shall strive to save the public's confidence in the office's fair and unprejudiced prosecution of its duties and liabilities.
- Legal Aid Defense Counsel shall also follow the law of ethics specified by Bar Council of India for attorneys.

Engagement with law schools

Law schools constantly assign their scholars to Legal Administrations Institutions for internships and other small roles. Moreover, Clinics of Law Colleges also collaborate with Legal Services Institutions. Law students can be engaged with the Legal Aid Defense Counsel office as to give them significant exposure to practical corridor of felonious regulations setting up a defense method and doing legal exploration in colorful factual scripts. Law scholars may be so engaged in the ensuing areas in Legal aid defense counsel office:

- Legal research in criminal cases.
- Visiting locations of crimes.
- Interviewing accused and their family members and other relevant persons.

- Visits of Prisons and Legal Aid clinics.
- Being a part of various campaigns
- help in sifting through all of the substantiation collected by the execution and furnishing effective input for preparing defense strategy.

The externship to law scholars can be offered for a presented up to 3 months. The law scholars so engaged shall not be paid any paycheck by the Legal Services Authorities but the instrument of work and period of work will be issued by the Chief Defense Counsel & Secretary, DLSA.

Conclusion:

It was beautifully written by Reginald Heber Smith in his book ‘Justice and the Poor’ that “Without equal access to the law, the system not only robs the poor of their only protection, but it places in the bands of their oppressors the most powerful and ruthless weapon ever invented.”

This move of the Legal Services authority will definitely help aid the objective and aim of the LSA Act 1987. To have a successful legal aid movement in India, the government needs to take appropriate steps by spreading awareness and educating the people about their basic fundamental rights. The only objective or aim of the government should be to provide ‘equal justice to all’. To those from the lesser developed backgrounds who are falsely accused of crimes will now be able to seek justice. Lawyers will now be able to focus on clients individually and hence timely and effective justice will be granted. The Defense aid council will establish a wall against people maliciously framing individuals from the backward areas which often lead to loss of mental and physical state of mind.

Subsequently, lawful guide endeavours to guarantee that the established vow is satisfied in its letter and soul and equivalent equity is made accessible to the oppressed and more fragile areas of the general public. In any case, despite the way that free legitimate guide has been held to be important assistant of law and order, the legitimate guide development has not accomplished its objective.

There is a huge gap between the objectives set and met which truly needs a bridge to connect the two and help achieve results efficiently. The significant obstruction to the legitimate guide development in India is the absence of lawful mindfulness. Individuals are as yet not mindful of their fundamental freedoms because of which the legitimate guide development has not accomplished its objective yet. It is the shortfall of legitimate mindfulness which prompts double-dealing and hardship of freedoms and advantages of poor people.

Acknowledgement

This paper and the research behind it would not have been possible without the exceptional mentoring of Adv. Prashant Trivedi Sir. Due to his constant support and motivation, the research work began and furthermore under his guidance was completed.

I would like to extend my gratitude furthermore as this research paper broadened my knowledge spectrum and led me to enhance and improve my researching skills. This paper indeed gave me a great opportunity to study the Legal Aid – its provisions and current schemes in depth thereby helping me formulate the same in the form of a research paper.

I will forever be grateful for their guidance.

References:

Bibliography:

1. The Legal Services Authority Act, 1987.
2. Model Law on Legal Aid in Criminal Justice System UNODC
3. The 14th Law Commission of India Report on Reform of Judicial Administration (1958), Publisher: Ministry of Law, New Delhi
4. The 16th Law Commission of India Report.
5. Legal Aid Defense Counsel Scheme 2022 (Modified)

Webliography:

1. Legal Aid and Awareness in India: Issues and Challenges. (n.d.).
2. Raj, K. (2022, August 29). New legal aid system needed to ensure justice for the poor. The Hindu ,Frontline.
3. Garg, R. (2020, November 28). Challenges and solutions to free legal aid - iPleaders
4. Buradikatti, K. (2021, October 24). Legal aid to the poor does not mean poor legal aid: Justice Lalit. The Hindu.
5. The Legal Services Authorities Act, 1987. (2019, January 8). National Legal Services Authority
6. Lok Adalat. (2019, February 26). National Legal Services Authority
7. Corner, L. (2021, September 14). Legal Services Authorities Act 1987 - An Overview - Law Corner
8. <https://districts.ecourts.gov.in>