

CHAPTER 31

Justice and Legal Aid

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1. ABSTRACT

Among the various types of poor and marginalized masses in India, Juveniles are the most vulnerable, they follow the track of crime due to lack of proper parental care. Juvenile delinquency is especially widespread among the socio-economically disadvantaged people of the country. In the early stages, juvenile delinquents are in desperate need of legal assistance to help them deal with their legal issues. Even in the states like Haryana Juveniles do not have access to free legal aid. Those who are denied free legal assistance are left helpless and forced to hire private legal counsel. In many cases, children in conflict with law are not informed of such legal knowledge by juvenile justice authorities or child welfare commissions. Therefore, action by the state is required to develop a proper system that includes quality legal education and awareness programs to aid and make justice within the reach of such needy sections of society concerning legal aid incorporated under the Directive principles of state policy.

Keywords: Children, Legal, Lawyer, Juvenile justice, Protection

Abbreviations: CILAS Committee for the Implementation of Legal Aid Services

PIL Public Interest Litigation

NALSA National Legal Services Authority

JJB Juvenile Justice Board

INTRODUCTION

One of the most notable features of the Constitution of India, 1950 is that it obligates the judiciary to hold a dignified and substantial role. The primary goal of every judicial process in a country is to provide justice to the people, and the concept of access to justice includes both free legal aid and legal empowerment. When one considers the scenario in a nation like India, diligent people are below the poverty line and unaware of their rights, and is unable to arrange or pay lawyers to access various courts of law. As certain weaker and underprivileged groups of society are deliberately denied access to justice, legal aid services will play a vital role in formulating an appropriate justice delivery system for all social and economic backward strata.

Article 39A of our Constitution establishes the right to free legal assistance as a fundamental right. Article 14 guarantees equality before the law for all people, regardless of caste, creed, or economic background. In addition, the National Legal Service Authority of India (NALSA) was established in 1995 under the Legal Services Authority Act, 1987, with the objective of providing free legal services to the economically weaker sections, and State Legal Services Authorities were formed to hold out the policies of the National Legal Services Authority. Legal aid has contributed significantly in past few decades, though there are numerous major loopholes that weaken the dynamic nature of legal aid. The Juvenile Justice Board's function, according to Section 8 (3)(b) of the Juvenile Justice Act 2015, is to ensure the availability of legal aid for children through legal service institutions. There is strong evidence that free legal aid is extremely difficult to get by for those who really need most -juveniles in conflict with law.

LEGAL AID IN INDIA

After Independence NH Bhagwati J, then of the Bombay High Court, and Trevor Harris J, then of the Calcutta High Court, launched legal assistance programmes.¹ The issue of legal assistance was also brought to the law commission, which was charged with offering suggestions on how to make the legal aid programme a more effective tool for achieving social justice. Under the guidance of eminent jurist M.C Setalvad, the panel made recommendations in its XIV report, stating that free legal aid is a service that the state should give to the poor. The Commission also proposed that the word "pauper" be replaced with "poor persons"² in Order XXXIII CPC. In 1960, the Government of India created a comprehensive programme of legal aid in all courts, including tribunals, based on the recommendations of the Law Commission. It called for the formation of state, district, and tehsil-level committees. However, the system did not survive due to governments' incapacity to execute the scheme due to a shortage of funds.

In 1973, the Indian government formed the Krishna Iyer Committee, an expert committee charged with determining how the states could develop and implement a legal aid programme. The Committee recommended that legal aid committees be established in each district, state, and central levels. Law clinics in universities and lawyers should be enlisted to assist in the formation of autonomous corporations. To successfully execute the Legal Aid Scheme, the Government of India constituted a commission, chaired by PN Bhagwati J. In rural regions, it promoted the idea of Legal Aid Camps and Nyaylayas. The Committee suggested that the principle of legal aid be included into the constitution. As a result, Article 31-A was added to the State Policy Directive Principles.³

The Central Government formed the Committee for the Implementation of Legal Aid Services

(CILAS) in 1980, and it continues to exist today. It still funds and supports many committees at various levels. It established the Supreme Court Legal Aid Committee and provides legal aid to state legal aid and advice boards as well as paralegal institutions. In addition, CILAS was obligated to undertake a study on the impact of PIL on Legal Aid Schemes.⁴ The court said “it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek liberation through the court’s process that he should have legal services available to him.....Free Legal services to the poor and the needy is an essential element of any “reasonable, fair and just procedure”⁵

Section 304 of the Code of Criminal Procedure, 1973 states that it is the Constitutional responsibility to give legal aid (at state expenditure) to the accused in the beginning when he is initially brought before the Magistrate and continues whenever he is brought before the Magistrate for remand.

According to Article 14 (3) of the International Covenant on Civil and Political Rights "The right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, to be informed if he does not have legal assistance, of his right; and to have legal assistance assigned to him in any case where the interest of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it."⁶

The Legal Services Authorities Act of 1987 was created to provide a legislative framework for legal aid programmes across the country. After the Amendment Act of 1994 made certain changes to the Act, it was eventually put into effect on November 9th, 1995. The Legal Services Authorities Act, 1987, clearly fulfils the state mandate set forth in Articles 39 and 39A of the Constitution of India, 1950 stating that legal services authorities are established to provide free legal services to the poorer sections of society in order to ensure that no citizen is denied justice due to economic or other disabilities.

¹Rajeev Dhawan (Ed). Justice Nh Bhagwati (1334) and Justice Trevor Harris of Calcutta,” Law as Struggle: Public Interest Litigation in India” (1994) 36 JILI 325.

² Roma Mukherjee; Women, Law and Free Legal Aid (Deep & Deep, New Delhi 1998).

Legal Services Authorities Act 1987⁷

Section 12 of Legal Services Authorities Act 1987, laid down the list of persons who are entitled to legal services; it includes:

- (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;

(c) a woman or a child;

(d) a mentally ill or otherwise disabled person

(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

(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.

³ Rajeev Dhawan, "Law as Struggle: Public Interest Litigation in India" (1994) 36 JILI 302.

⁴ Government of India, "Report on National Judicare: Equal Justice Social justice" (1778) (Bhagwati Krishna Iyer Report)

⁵ John Rawls, A Theory of Justice

⁶ Article 14 (3) the International Covenant on Civil and Political Rights

LEGAL AID IN JUVENILE JUSTICE SYSTEM

Free legal aid is the provision of free legal services in civil and criminal matters for those poor and marginalized people who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any Court, Tribunal or Authority.⁸ Only some classes of society are eligible for free legal aid under the provisions of the Legal Service Authority Act, such as lower castes, women, children, human trafficking victims, people with disabilities, and some economically marginalised groups. Children seem to be the most vulnerable of these categories, having a considerably great difficulty seeking justice. As a result, this vulnerable section represents major challenges to our justice delivery system, demanding to take

responsibility for them.

⁷ <http://nalsa.gov.in/acts-rules>

⁸<https://nalsa.gov.in/services/legal-aid/legal->

services#:~:text=Free%20legal%20aid%20is%20the,any%20Court%2C%20Tribunal%20or%20Authority.

The Juvenile Justice Act, 2015 is primarily intended to address the needs of children who are in conflict with the law and in need of care and protection by meeting their basic needs through proper care, protection, development, treatment, and social reintegration through a "child-friendly approach" in resolving cases that are in the best interests of children and promoting their rehabilitation through institutions and bodies established under the Act.

The Juvenile Justice Board's function, according to Section 8 (3)(b) of the Juvenile Justice Act 2015, is to guarantee that legal aid for children is available through legal service institutions.

The Child Welfare Committee's powers and obligations, according to Section 30 (xvii), include providing children with access to adequate legal assistance.

Institutions authorized under the Act for providing rehabilitation and reintegration services may incorporate legal aid if essential, as per Section 53(1) (viii).

Guidelines issued by the National Legal Services Authority (NALSA) for Legal Services in Juvenile Justice Institutions in relation with the implementation of the Hon'ble Supreme Court of India's judgement⁹ dated 19.08.2011 in the matter of the establishment of legal aid centers attached to JJBs.

- a. When a child is brought before the Board by the police, the Board should call the legal aid lawyer in front of it, introduce the juvenile/parents to the lawyer, and explain to the juvenile and his/her family/parents that it is their right to have a legal aid lawyer and that they do not have to pay any fees for it.
- b. Before holding a hearing, the JJB should allow time for a legal aid lawyer to meet with the juvenile and his or her parents.
- c. The Juvenile Justice Board shall indicate in its order that a legal aid counsel has been appointed, and also the name and presence of the legal aid counsel.
- d. The board shall ensure that a child and his parents have enough time to become acquainted with legal aid lawyers and to discuss the matter before the hearing.
- e. The Juvenile Justice Board should ensure that no juvenile case goes unrepresented by legal counsel.

⁹ Sampurna Behrua V. Union of India & Ors. W.P. No. (C) No. 473/2005

- f. At the end of each month, the Juvenile Justice Board shall give a certificate of attendance to legal aid lawyers and review their work done reports.
- g. In the event of a lapse or misdeed by legal aid counsels, the Board should notify the State Legal Services Authority and take corrective action.
- h. The Juvenile Justice Board and legal aid lawyers should collaborate in an amicable manner, with solidarity, and cooperation. It has the potential to improve everything.
- i. By reading and participating in workshops/trainings on Juvenile Justice, Legal Aid Lawyers can have a better understanding of Juvenile Justice Law and Juvenile Delinquency.
- j. A Legal Aid Lawyer should keep a diary at the office where dates of cases are entered on a regular basis.
- k. If a legal aid lawyer is on leave or unable to attend Board on any given day, he or she shall ensure that cases are handled by a colleague legal aid lawyer in his or her absence and that no cases are overlooked.
- l. A legal aid practitioner should not view legal aid job as a kind of generosity and should strive to provide the best service possible.
- m. At the monthly meeting with the District Legal Services Authority, the Legal Aid Lawyer should discuss questions, concerns, and problems.
- n. A legal aid lawyer should keep track of each case's progress and write daily entries.
- o. A Legal Aid lawyer should not wait to be called by JJB before taking on a case. By meeting families that come to JJB, he or she should make an attempt to take up cases on his or her own.
- p. Legal Aid Lawyers should build faith and confidence in the children and families whose cases they handle, and they should make every effort to provide them with the best possible assistance.
- q. The terms and conditions of empanelment on the Legal Aid Panel shall be followed by legal aid lawyers.
- r. Legal Aid lawyers shall submit their monthly work done report to JJB for verification within one week of the end of each month, and then submit it to the appropriate authorities with an attendance certificate for payment processing.

s. Legal Aid lawyer must tell the client of the next hearing date and provide his or her phone number so that they may contact him or her in the event of an emergency.

Juveniles are the most vulnerable members of India's poor and marginalised populations, since they follow the path of delinquency due to a lack of sufficient parental care and economic status. Juvenile delinquency is more common among the country's socioeconomically disadvantaged. Juvenile offenders in the early phases of life are in critical need of legal aid in order to deal with their legal issues.

2. STATEMENT OF THE PROBLEM

The proposed study aims to find out the extent of legal aid provided for the protection of the rights of children under the Juvenile Justice System.

3. OBJECTIVES

The following goals will guide the research:

- To determine the socioeconomic status of juveniles living in Observation homes.
- To learn about the legal aid provided to Juveniles in Observation Homes.

4. TOOLS OF DATA COLLECTION

The research is based on a sampling process. The primary as well as secondary data has been used. This research aims to find out the extent of Legal Aid provided to the juveniles living inside the Observation Homes. The researcher attempted to learn more about the socioeconomic status of the inmates, as well as the extent of Legal Aid provided to those who are in need. This study also aims to identify government agencies and law enforcement agencies, as well as the juvenile justice system and other organisations that work in the field of child rights and provide Legal Aid to the Juveniles. The overarching goal of the study is to identify the issues and create knowledge that will assist policymakers and other authorities in implementation of legislation and taking preventative measures to provide Legal Aid to all the needy Juveniles.

5. METHODOLOGY

For study researcher selected two Observation Homes and one Place of Safety located in different district of Haryana. The Research asked some specific questions from all the Juveniles selected inside the Observation Homes and Place of Safety. Thus, the total sample size for the

research is 275. To estimate the socio-economic profile of juveniles, questions regarding life prior to the institutions, occupation and legal aid provided to them were asked by researcher. Simple descriptive statistics is used to analyse the results.

6. RESULT AND DISCUSSION

PERCENTAGE

Figure 1. Status of the Juveniles and Legal Aid provided to them as on 25th September 2021.

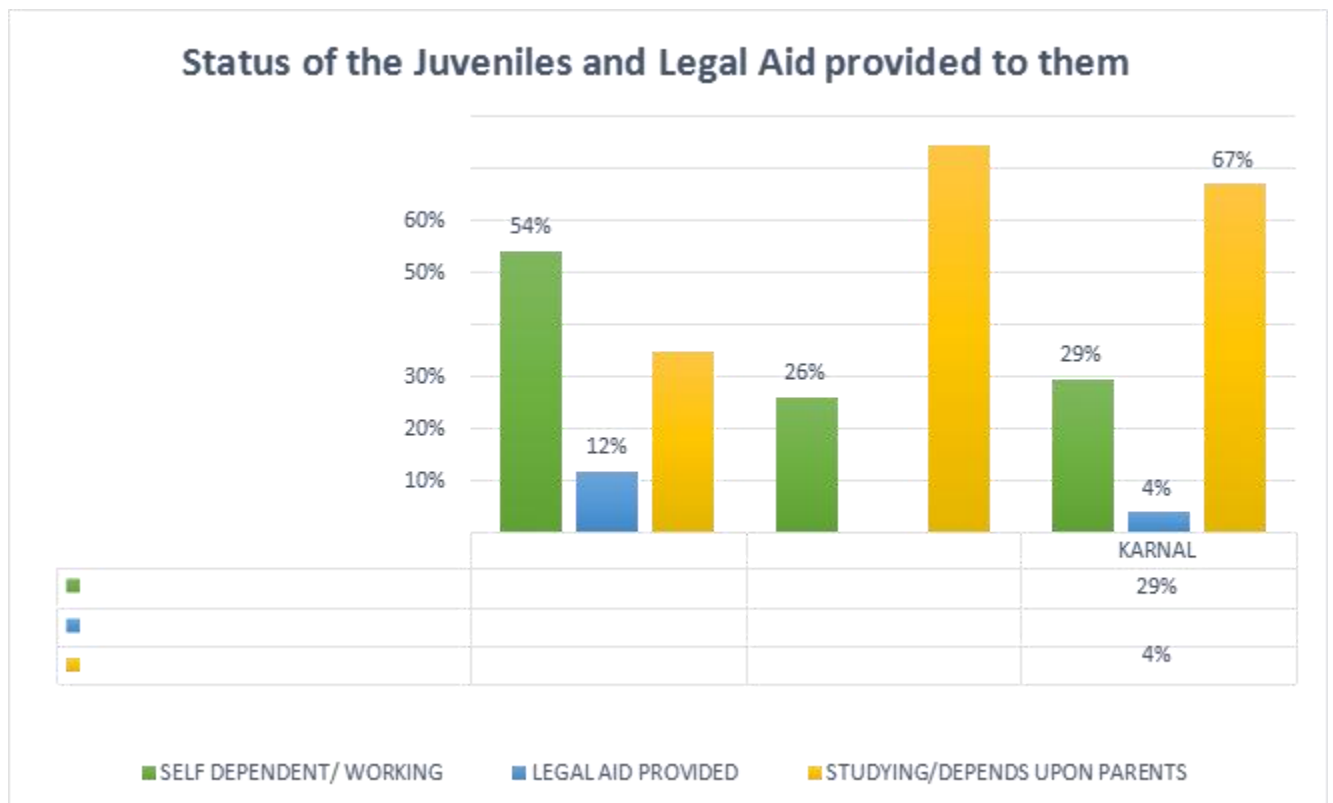


Figure 1 suggests most of the Juveniles from the different Observation Home/ Place of Safety were studying and depend upon their parents before they enter into the Observation Home/ Place of Safety. The figure also suggests that 54% of Juveniles from Observation Home Ambala were self-dependent and working at their own and only 12% of them have been provided Legal Aid by the authorities. The table represents that 26% of the total Juveniles inside Observation Home Hisar were self-dependent and working for their living. Legal Aid is not provided to any of them. Similarly, the table represents the condition of Place of Safety Karnal that 29% of the juveniles were self-dependent and only 4% were provided with Legal Aid. In the Observation Home/ Place of Safety, the situation is not found good, as Juveniles responded that they are not provided with Legal Aid and they have hired their private counsel.

There are 16 legal services clinics in the state of Haryana for Juvenile Justice Board.

Even in a wealthy state like Haryana, statistics indicates that free Legal Aid received by the Juveniles is very less. Those who do not get free legal assistance are left defenceless and forced to hire private legal counsel, which may cost a fortune and destroy their hard-earned money. Juveniles are frequently not educated on such legal expertise at Juvenile Justice Boards and Child Welfare Committees, resulting in a failure to help them. After putting in place all of its mechanisms, the State Legal Services Authorities (SLSA) focused its efforts on providing legal assistance to adults. A Probation Officer, who is both a legal and a social officer in the system, assisted Juvenile Justice. The probation officer (PO) is responsible for bringing the juvenile before the Juvenile Justice Board, presenting the case, and assisting the Child in Conflict with the Law (CCL) with all social and legal issues. The rise in the number of private legal professionals handling matters of child in conflict with law has resulted in child exploitation. It is discovered that the police and private attorneys have a connection, and that the juveniles are "directed" to choose lawyers at the police station. The police officer would also play the role of a good Samaritan by directing the child in conflict with law to certain attorneys in exchange for a commission. As a result, the state must take action to build a competent system that incorporates excellent legal education and awareness initiatives to assist and make justice accessible to such needy elements of society, with reference to legal assistance included under state policy directives.

7. CONTRIBUTION OF JUDICIARY

The highest court of justice has made numerous historic judgments addressing access to free legal aid based on the interpretation of the constitution, progressively establishing an effective judicial system that provides free legal services to the poor and marginalized in our society.

In the case of *Ramakant v. State of Madhya Pradesh*¹⁰ the Supreme Court of India concluded that neither the Constitution nor the Legal Service Authority Act, 1987 distinguishes between a trial and an appeal for the purpose of giving free legal help to an accused person in detention. As a result, the high court was required to offer legal help to the accused at the expense of the state. The matter was remanded to the High Court for further consideration. Even the NALSA Act of 1987, which sets the requirements for providing legal aid, does not distinguish between the trial and appeal stages.

¹⁰ *Ramakant v. State of Madhya*, (2012) 8 SCC 533.

In *Hussainara Khatoon v. State of Bihar*,¹¹ it was determined that free legal assistance is an essential component of a defendant's right to a fair trial and implicitly ensures article 21, the right to a dignified life. As a result, in order to defend rights given under Article 21, article 39-A makes it necessary for the state to properly administer this fundamental right.

In *Khatri v. State of Bihar*,¹² it was held that just because an accused does not request legal assistance does not mean he will not be provided with legal assistance at no cost to the state; additionally, if free legal aid is not provided to the poor, ignorant, and illiterate, it is worthless and merely a promise on paper.

It was decided in *Suk Das v. Union Territory of Andhra Pradesh*¹³ that it is now proven law that a person accused of an offence that may jeopardise his life or personal liberty has a basic right to free legal help at the expense of the state, and that this is inherent in Article 21. No indefinite confinement of a person who cannot afford it.

In *Anokhilal v. State of Madhya Pradesh*¹⁴ the Apex Court determined that the amicus curiae in this case was not given enough time to prepare, which constituted a denial of the right to legal help since it was not genuine and meaningful. The court overturned the conviction and punishment and ordered that the matter be re-examined. The court then established rules to prevent repetition of the situation: in cases where a life sentence or death sentence is possible, only advocates with at least 10 years of experience should be appointed as legal aid counsel; Senior Advocates must first be considered for appointment as amicus curiae in the High Court during the confirmation of a death sentence; and counsel must be given sufficient time to prepare.

8. CONCLUSION

A core human right is to have access to affordable and speedy justice. However, in practise, all legal services have gone to the highest bidder. The best available counsels are given to wealthy individuals and major organisations. There should be a system of judicial administration that is accessible to the poorest people. Equal access to the law for the wealthy and the poor is critical to the maintenance of rule of law. Overall, the purpose remains the same, which is to provide justice to the marginalised groups that are victims of atrocities. Finally, it can be inferred from the examination of legal aid in India that thorough inspections of legal aid

¹¹ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 98.

¹² *Khatri v. State of Bihar*, (1981) 1 SCC 627.

¹³ *Sukh Das v. Union Territory of Andhra Pradesh*, (1986) 2 SCC 401. *Bar council of India v. Union of India*, (2012) 8 SCC 243.

¹⁴ *Anokhilal v. State of Madhya Pradesh* AIR 2020 SC 232 CRIMINAL APPEAL NOS. 62-63 OF 2014

organisations at regular intervals, as well as improving the quality of legal help by incorporating qualified legal aid counsels, are necessary to remove the stigma of incompatible free legal aid. Our justice-delivery paradigm should be able to scale up in response to changing societal requirements and expectations. As a result, an attempt must be made to replace the current rigid justice apparatus, which has limited space for improvement. By combining efforts to provide proper access to justice through paralegal aid services, effective alternate dispute resolution mechanisms, legal institutions engagement with people through legal aid cells, and proper monitoring of the current system, the state of legal aid services in the country can be revived. The joint goal of the judiciary, government, and legislature to provide justice to the last man in need might restore marginalised people's faith in the justice delivery system.

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