

LEGAL AID IN JUVENILE JUSTICE SYSTEM

Role	Name	Affiliation.
Principal Investigator	Prof. G.S. Bajpai	Registrar , National Law University Delhi
Paper Coordinator	Dr. K.P. Asha Mukundan	Assistant Professor, Tata Institute of Social Sciences
Content Writer/Author (CW)	Dr. K.P. Asha Mukundan	Assistant Professor, Tata Institute of Social Sciences
Content Reviewer (CR)	Dr. Roshni Nair	Assistant Professor, Tata Institute of Social Sciences
Language Editor (LE)		

Description of Module:

Items	Description of Module
Subject Name	Criminology
Paper Name	Juvenile Justice
Module Name/Title	Legal Aid in Juvenile Justice System.
Module Id	
Pre-requisites	Basic understanding of <ul style="list-style-type: none">• Legal Aid• Criminal Justice System• Juvenile Justice System.
Objectives	<ul style="list-style-type: none">➤ To understand the concept of legal aid in Juvenile Justice System.➤ To understand working guidelines of legal aid functioning in Juvenile Justice system.➤ Appreciate the socio-legal functioning.
Key words	Child in conflict with law, criminal justice system, juvenile justice system, Legal aid,

Acronyms:

Child in Conflict with Law	CCL
Criminal Justice System	CJS
Indian Penal Code	IPC
Juvenile Justice (Care and Protection of Children) Act 2015	JJAct
Juvenile Justice System	JJS
National Legal Services Authority	NALSA
Probation Officer	PO
State Legal Services Authorities	SLSA



Module

1. Introduction
2. Legal Services Authorities Act 1987
3. Hierarchy of Bodies Created Under The Act
4. Legal Aid in the Juvenile Justice System :
5. Guidelines for Legal Services in Juvenile Justice Institutions as per <i>Sampurna Behrua v. Union of India & Ors</i>
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1. Introduction

Article 39 of the Constitution of India provides for principles of policy to be followed by the State. It states “The state shall, in particular, direct its policy towards securing(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment”

Article 39A of the Constitution emphasizes on “ Equal justice and free legal aid”. It states “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 legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”

The crucial words in the principles contained in **Article 39A** are, ‘the obligation of the State’ to provide free legal aid 'by suitable legislation or by schemes' of 'in any other way', so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.

Criminal Procedure Code under section 304 mentions that it is the Constitutional duty to provide legal aid (at state expenses) which arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand.

Besides this, **Article 8 of the Universal Declaration of Human Rights** states “Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted by the Constitution or by law.

Article 14 (3) of the International Covenant on Civil and Political Rights guarantees to everyone: "The right to be tried in his presence , and to defend him self 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 anycase where the interest of justice shall require, and with out payment by him in any such case if he does not have sufficient means to pay for it."

India is a signatory to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In 1980, a Committee under the Chairmanship of Hon. Mr. Justice P.N. Bhagwati, then Judge of the Supreme Court of India was set up at the national level to oversee and supervise legal aid programmes

throughout the country. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country.

In 1987 **Legal Services Authorities Act** was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th of November 1995 after certain amendments were introduced therein by the Amendment Act of 1994. The Legal Services Authorities Act, 1987 clearly fulfills the state mandate stated in Article 39 and 39A of the Indian Constitution and it clearly states that legal services authorities are constituted to provide free legal services to the weaker sections of the society to ensure that justice is not denied to any citizen due to reason of economic or any other disabilities.

2. Legal Services Authorities Act 1987¹

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.

Section 13 of the Act further states -

- 1) Persons who satisfy all or any of the criteria specified in Section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima-facie case to prosecute or to defend.
- 2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

The Free Legal Services include:

- a) Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
- b) Providing service of lawyers in legal proceedings;

¹ <http://nalsa.gov.in/acts-rules>

- c) Obtaining and supply of certified copies of orders and other documents in legal proceedings.
- d) Preparation of appeal, paper book including printing and translation of documents in legal proceedings..

3. Hierarchy of Bodies Created Under The Act

National Legal Services Authority (NALSA) is the apex body constituted to lay down policies, principles, guidelines and frame effective and economical schemes which can be implemented through the State Legal Services Authorities in order to make legal services available to all. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes.

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA.) It is mandated to discharge the following main functions on regular basis:

- I. To Provide Free and Competent Legal Services to the eligible persons;
- II. To organize Lok Adalats for amicable settlement of disputes and
- III. To organize legal awareness camps in the rural areas. and to give legal services to the people and conduct Lok Adalats in the State.

State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman. District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its ex-officio Chairman. Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organise Lok Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

Primarily, the State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, etc.

4. Legal Aid in the Juvenile Justice System :

With all its systems in place, the State Legal Services Authorities (SLSA)'s work was concentrated more towards providing legal aid to the adults.

The Juvenile Justice functioned with the help of a Probation Officer who was the legal come social officer in the system. It was the probation officer (PO) who used to produce the child before the Juvenile Justice Board, present the case and assist the Child in Conflict with Law (CCL) for all social and legal matters. Private lawyers used to function, but their presence was less than that of the POs.

With the passing years, the working of the PO got diluted due to various factors and their void was then occupied by the private lawyers.

The increase in the number of private lawyers representing CCL cases, resulted in exploitation of children. It was seen that there is a nexus between the police and the private lawyer and the children are "advised" to appoint lawyers at the police station itself. The police officer would play Samaritan by also referring the CCL to particular lawyers for which he/she would get a commission for the same.

Besides this, it was seen that the lawyers who practiced in the JJS advocated for adult like practices of procedures before the JJB. Their main focus was on the legal case and not on the rehabilitation of the

CCLs which is the prime objective of the Act. Given these and many such challenges, in October 2011, the Supreme Court, in *Sampurna Behrua v. Union of India*, a public interest litigation, directed the Directors General of Police of the States to designate one police officer in each police station as juvenile/child welfare officer. The court directed legal services authorities to train such police officials and give free legal services to all children in conflict with law on an incremental basis, starting with the State capital cities.

In the order dated 19.08.2011, Hon'ble Supreme Court of India in *Sampurna Behrua v. Union of India & Ors.* W.P.(C) No.473/2005 directed the National Legal Services Authority to put in place Legal Aid Centres attached to the Juvenile Justice Board (s) in the State capitals where there is a high pendency.

The order further states, that the State Legal Services Authority is requested to establish Legal Aid Centre (s) attached to the Juvenile Justice Board (s) in the State/Union Territory Capitals immediately. For this purpose, the following steps may be taken immediately:

- a. The State Legal Services Authority may direct the District Legal Services Authority of the Capital District to establish Legal Aid Centre (s) in the Juvenile Justice Board (s) working the capital city.
- b. The aforesaid DLSA may be directed to prepare a list of young panel lawyers for such Legal Aid Centre. The panel lawyers may be selected from young and competent lawyers, preferably women lawyers, who are willing to work the entire day in a child-friendly manner in compliance with the spirit and object of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Juvenile Justice Rules, 2007. The same set of lawyers may be made available for legal aid in the CWCs and in the different Homes established under the Act, whenever necessary.
- c. Arrangements may be made by the DLSA concerned to organise a training camp for the aforesaid panel lawyers on the juvenile jurisprudence, focusing on the philosophy behind the UN Convention on the Rights of the Child 1989 and the provisions in Juvenile Justice (Care and Protection of Children) Act, 2000 with a special emphasis on the Principles enunciated in Chapter-II, Rule-3 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (Central Rules).
- d. Even if there is no infrastructural facility available in the JJB premises, the panel lawyers may be directed to attend the JJB proceedings throughout the day on the days when the JJBs sit, depending on the volume of work. The number of panel lawyers to be deputed on a particular day may be regulated by the DLSA and they may be sent to the JJB on turn basis. However, a lawyer entrusted with a case may be directed to handle it till its disposal.
- e. The list of panel lawyers containing their names, addresses and contact numbers may be communicated to the Principal Magistrates and the Members of the JJBs and such a list may be exhibited at a prominent place in the JJB (painted on a board or on a flex board) premises.
- f. A special request may be made to the Principal Magistrates and the Members of the JJBs to avail of the services of the panel lawyers and not to leave the children in conflict with law to the mercy and exploitation by others.
- g. The Principal Magistrates and the Members of the JJB may be requested to inform all children in conflict with law about the availability of free legal aid and about the list of panel lawyers displayed as above.
- h. Honorarium at a special rate may be fixed by the State Legal Services Authority for those panel lawyers who attend the JJBs for the entire day.
- i. The panel lawyers may, for the time being, be permitted to use the existing infrastructural

facilities available in the District Legal Services Authority.

- j. A monthly statistical report on the Legal Aid given to children shall be submitted to the State Legal Services Authority who shall include the same in the statistics sent to NALSA.
- k. The guidelines to be supplied to the panel lawyers are annexed to this communication. Copies of the same may be arranged to be given to each panel lawyer and acknowledgement of receipt of the same may be obtained from them.

5. Guidelines² for Legal Services in Juvenile Justice Institutions as per *Sampurna Behrua v. Union of India & Ors.* Is given below .

- i. When a child is produced before Board by Police, Board should call the legal aid lawyer in front of it, should introduce CCL / parents to the lawyer , CCL and his/her family/parents should be made to understand that it is their right to have legal aid lawyer and that they need not pay any fees to anyone for this.
- ii. JJB should give time to legal aid lawyer to interact with CCL and his/her parents before conducting hearing.
- iii. Juvenile Justice Board should mention in its order that legal aid lawyer has been assigned and name and presence of legal aid lawyers should be mentioned in the order.
- iv. Board should make sure that a child and his parents are given sufficient time to be familiar with legal aid counsel and get time to discuss about the case before hearing is done.
- v. Juvenile Justice Board should make sure that not a single CCL's case goes without having a legal aid counsel.
- vi. Juvenile Justice Board should issue a certificate of attendance to legal aid lawyers at the end of month and should also verify their work done reports.
- vii. In case of any lapse or misdeed on the part of legal aid lawyers, Board should intimate the State Legal Services Authority and should take corrective step.
- viii. Juvenile Justice Board and the legal Aid lawyers should work in a spirit of understanding, solidarity and coordination. It can bring a sea-change.
- ix. Legal Aid Lawyer should develop good understanding of Juvenile Justice Law and child psychology by reading and participating in workshops/ trainings on Juvenile Justice.
- x. Legal Aid Lawyer should maintain a diary at center in which dates of cases are regularly entered.
- xi. If a legal aid lawyer goes on leave or is not able to attend Board on any given day, he/she should ensure that cases are attended by fellow legal aid lawyer in his/her absence and that case is not neglected.
- xii. Legal Aid lawyer should not take legal aid work as a matter of charity and should deliver the best.
- xiii. Legal Aid Lawyer should raise issues/ concerns/ problems in monthly meeting with State Legal Services Authority.

² <http://nalsa.gov.in/sites/default/files/document/Guidelines%20JJB.pdf>

- xiv. Legal Aid Lawyer should maintain file of each case and should make daily entry of proceeding.
- xv. Legal Aid lawyer should not wait for JJB to call him/her for taking up a case. There should be effort to take up cases on his/her own by way of approaching families who come to JJB.
- xvi. Legal Aid Lawyer should inspire faith and confidence in children/ their families who cases they take up and should make all possible efforts to get them all possible help.
- xvii. Legal Aid lawyer should abide by the terms and conditions of empanelment on legal Aid Panel.
- xviii. Legal Aid lawyer should tender his/her monthly work done report to JJB within one week of each month for verification and should submit it to concerned authority with attendance certificate for processing payments.
- xix. Legal Aid Lawyer must inform the client about the next date of hearing and should give his/her phone number to the client so that they could make call at the time of any need.

6. No Bal Lok adalats in JJBs.:

NALSA in its letter dated 2nd November 2016 of Ref.No.L/39/2015/NALSA has communicated to all SLSA's stating that "Holding of such Adalats for disposing of cases pertaining to children in conflict with law is against the letter and spirit of juvenile law and need to work out a rehabilitative mechanism for children in conflict with law, whatever be the nature of the offence, they are alleged to have committed. While the intent behind holding such Adalats is to ensure expeditious disposal of cases of children in conflict with law the same cannot be done against the basic premise that children are to be treated differently and that before disposal of a case, the Juvenile Justice Board should interact with the children, look at social investigation report and incorporate an individual care plan in the disposal order." In this context, the practice of holding Bal Adalat, Bal Samwad Adalat, Bal Lok Adalat for disposing of cases pertaining to children in conflict with law has been discontinued forthwith.

7. Way forward

The Juvenile Justice (Care and Protection of Children) Act 2015 is a Socio Legal Act. The social and the legal aspect in the Act must go hand in hand. This is the reason why the Juvenile Justice Board comprises of a magistrate and two social workers.

While it is a positive move to strengthen the legal aid, the apprehension lies in strengthening the legal aid without strengthening the probation system might lead to the "legalization" of the "socio legal Act". This is exactly what is happening. While there is an emphasis being laid on "disposal" of cases, there is little emphasis on "rehabilitation of cases" which negates the principle of socio legal.

To get the JJS function in its true spirit, it is important to strengthen the free legal aid as well as the probation system simultaneously, so that the CCLs can finally benefit out of the same.

The *Sampurna Behrua* case resulted in NALSA to set up a panel of lawyers who are trained to deal with CCL cases. Given that they are paid well by the State, the element of economic exploitation is minimized. However, this provision is yet to be implemented in its true spirit across all states. Till then the challenges of free legal aid continue.

A concept of "Socio-Legal Cell" may be more appropriate than "legal Aid Cell" in this context.



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