

“The poor and illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts” - Justice P.N. Bhagwati

RIGHT TO FREE LEGAL AID - KARNATAKA STATE

- Deepali, Bangalore

Introduction. In India, legal aid was first introduced by Justice P.N. Bhagwati under the Legal Aid Committee, formed in 1971. Legal Aid means providing free legal services to persons who are not able to afford legal representation and access to the legal and court system in India. Free legal aid is necessary to provide access to justice to all to ensure equality before law, right to legal advice and lawyer, and the right to a fair trial.

Constitutional Right. The belief of legal aid is not a charity but is a constitutional duty of the State and right of a citizen of India. Articles 14 and 22(1) make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all, without any discrimination, financial or otherwise. Moreover, Article 21, the right to life, also provides for reasonable, fair and just trial for all.

Article 39A clearly requires the State to promote justice by providing equal opportunities of justice to all. The State shall, in particular, provide free legal aid by means of laws, schemes or any other way to those who are economically backwards or in any other way suffer any infirmity or disability. The courts in India have held that in case any accused is not able to afford legal services then he has the right to free legal assistance at the cost of the State.

Legal Aid under Civil and Criminal Statutes. On the civil side, Order XXXIII, Rule 18 of the Code of Civil Procedure 1908 provides that the state and central governments should make provisions for providing free legal services to an indigent person. On the criminal side, Section 303 of the Code of Criminal Procedure, provides that the accused in a case is entitled to use the right to be defended by a lawyer of his choice and Section 304 provides that if such a person does not have sufficient means to engage a legal practitioner, free legal aid shall be provided to him at the expense of the state.

The Legal Services Authorities Act, 1987. To give a uniform statutory framework to the legal aid schemes in India the Legal Services Authorities Act (“Act”) was formulated in the year 1987. It was enforced on 9th November 1995. The Legal Services Authorities Act, 1987 made fundamental changes in the field of legal services. It is an Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity.

Authorities instituted under the Act to ensure free legal services. Following authorities have been established in India to work for free legal aid schemes:

National Legal Services Authorities (NALSA): NALSA is the apex body set up under the Act by the Central Government. It lays down necessary policies and principles to make legal services available, as provided for under the provisions of the Act. It also has a duty to make most effective and economical schemes for legal services and to grant funds to State Legal Services Authorities and NGOs for implementing legal aid programmes and schemes.

State Legal Services Authorities (SLSA): In every State, a State Legal Services Authority and in every High Court, a High Court Legal Services Committee have been constituted to provide legal aid in relation to the High Courts. District Legal Services Authorities and Taluka Legal Services committees have been constituted in the Districts and in most of the Talukas to give effect to the policies and direction of the NALSA and to provide free legal services to the people. It is also responsible for providing free legal aid, conducting Lok Adalats and undertaking legal aid programmes and other functions as the state authority may fix by regulations after consulting NALSA.

Karnataka State Legal Services Authority(KSLSA)

The earlier Karnataka Legal Aid Board was merged with the Karnataka State Legal Services Authority on 10.4.1997 under the National Legal Service Authority Act, 1987. The Karnataka State Legal Services Authority Rules, 1986 and Regulations, 1997 were framed.

Free legal advice and aid is given to people of all categories whose annual income is below INR 25,000 and to Scheduled Castes, Scheduled Tribes, Women, Children, people of weaker Sections, people with unsound mind, victims of communal violence, religious atrocities, floods, famine, earthquake or industrial destructions, industrial workers, to those who are in remand homes, to those who are subjected to flesh trade and bondage, through the State and District Legal Services Authority and Taluk Legal Services Committees.

The main objectives of the Karnataka State Legal Services Authority are:

1. Creating legal awareness, legal aid and settlement of disputes through amicable settlement are the main functions of the Authority.
2. Legal awareness programmes are taken up for empowerment of legal knowledge to all the citizens in general and to the weaker sections of the society in particular. Various activities are taken up to reach the vulnerable sections of the society such as SC/ST, Women, Industrial Labourers etc.,
3. The Authority provides legal aid by way of providing the services of able efficient services of Lawyers. Any person, who fulfils the criteria, is entitled for the legal Aid.
4. Lok Adalats organized by the Authorities and the Taluk Committees help the disputing parties to come to settlement through conciliation and such settlement reached before a Lok Adalat becomes a record having equal status as that of a judgment/decreed of the Court.
5. Karnataka State Legal Services Authority has 17 official Members which include the Principal Secretary, Dept. of Law, Finance Secretary, IGP, Registrar General of High Court of Karnataka etc., Apart from the above State Authority has 11 nominated Members who have experience in the field of Law, Finance, Social Service or Administration and who are engaged in uplifting the weaker sections of the society, including Schedule Castes, Schedule Tribes, Women, Children, rural and Urban Labour and who are interested in the implementation of the Legal Service Schemes.

Grounds for rejection of the claim for Free Legal Aid

An application claiming free legal aid may be rejected on the following grounds:

1. The eligibility criteria has not been met;
2. The person claiming free legal aid is capable enough to afford the costs;
3. The case does not have enough substance so as to stand in the court of law.

Free legal aid may also be withdrawn at a later stage in the event of misrepresentation or fraud by the aided person to obtain the free legal aid, his non-cooperation with appointed attorney, he becomes capable of affording the costs involved in the case, there is a misuse of legal procedure due to such free legal aid, the aided person dies (except in civil cases) and other factors as the court may deem sufficient to bring the aid to an end.

Cases where free legal aid is not available

Legal aid is not available in a case where proceedings of the case:

- pertain to, wholly or partly, defamation, malicious prosecution, contempt of court, perjury;
- relate to any election;
- is for the offence against which fine imposed is not more than Rs.50/-;
- is incidental to any of the matters mentioned above;
- in respect of economic offences and offences that are against social laws;
- where the person applying for legal aid is not directly concerned with case and outcome of the case will not affect the interests of such person.

Lok Adalat

Chapter VI of the Act provides for formation of Lok Adalats. Lok Adalats are set up to settle the matters brought to them from a civil court. Either of the parties can file an application before the court to transfer the case to a Lok Adalat, but both the parties must agree to the settlement of the case by the Lok Adalat. Every decree or order of the Lok Adalat shall be deemed to be that of a civil court and shall be final and binding on the parties. However, their orders are not appealable.

How to get Free Legal Advice/Aid in Karnataka

The right of early access to legal representation is one of the fundamental elements of fair trial rights. This right should begin the moment a person comes in contact with the criminal justice system. A person can get free legal aid through the following means:

Authorities established by Legal Services Authorities Act. A person who qualifies the eligibility criteria may approach the appropriate authority constituted under the Act to get free legal aid.

Pro Bono. Corporate social responsibility has gained popularity in the Indian legal fraternity. Many lawyers and law firms, now take up Pro Bono work and cases, where cost incurred is nominal. In fact, many law firms have a specialized Corporate Social Responsibility department to work on Pro Bono matters.

Legal Aid Clinics. All District Legal Services Authorities are required to establish legal aid clinics to provide legal aid to people, especially where there are geographical, social and other barriers to access to the legal services institution subject to the financial resources available with the district authority.

Persons with mental illness are often the weaker sections of the society. Their basic human rights are many a time subject to violation. Persons with disability, especially those suffering with mental illness and mental retardation do not get proper attention in matters of access to justice. In order to make them aware of their rights and equip them to avail the benefits of the different social welfare activities sponsored by the State and Central Government, the Free Legal Aid Clinic has been established by National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore in collaboration with Karnataka State Legal Service Authority on 15 Jan 2011 at their Out Patient Department complex.

Free legal aid service has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to persons with mental illness. The aim of the clinic is to provide free legal services to its patients in the form of legal counselling, mediation, alternate dispute resolution, advocate services and also to assist in court related procedures such as payment of court fees, filing affidavit and so forth. This initiative works on the principle of free and easy access to justice at door step.

Against this background, the guidelines are issued by National Legal Service Authority for the legal services institutions (such as State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, High Court Legal Services Committees, Supreme Court Legal Services Committee) to be followed while they deal with legal services to the mentally ill and persons with mental disabilities.

Non-Governmental Organisations (NGOs). Various NGOs provide free legal aid to people regarding the field they operate in and help them in getting legal services, either their own or those provided by the state/law firms/lawyers, etc.

Online Forums. There are various online forums and websites that provide free legal aid and services to people and helping them get connected with law firms' pro bono department.

Status report on key activities of Karnataka State Legal Service Authority as per the Annual Report of National Legal Services Authority for the year 2016 – 2017¹

Karnataka State Legal Services Authority has done a lot of work for the required objectives under the Act. Few highlights are as below:

¹*Ministry of Law & Justice*

Statement showing the number of persons benefitted through legal services and advice from April, 2016 to March 2017 in Karnataka

SLSA	SC	ST	Women	Children	In custody	General	Total
Karnataka	4280	2274	8647	350	2883	21444	39878

Legal awareness and legal literacy programmes organized by KLSA is an important activity which requires to create legal awareness. For this purpose KLSA organised various awareness programmes and also held legal literacy camps. **Following is the information related to Legal Literacy/Legal Awareness Camps/Programme organized by KLSA during the period April, 2016 to March,2017.**

SLSA	No. of Programs Held	No. of Persons Attended
Karnataka	7227	1170555

NALSA along with other Legal Services Institutions conducts Lok Adalats. The State Legal Services Authority (SLSA) or District Legal Services Authority (DLSA), as the case may be on receipt of an application from any one of the parties at a pre-litigation stage may refer such matters to the Lok Adalat for amicable settlement of the dispute for which notice would then be issued to the other party. There are also Permanent Lok Adalats set up in respect of Public Utility Services.

Following is the information on disposal in monthly Lok Adalat (Excluding National Lok Adalat) during April, 2016 to March, 2017.

SLSA	Pre-Litigation cases settled	Pending cases settled	Total cases settled	Total settlement amount (INR)
Karnataka	220325	185123	405448	3183097777

Following information is the information related to Permanent Lok Adalats (established under section 22-B of Legal Services Authority Act), during the period from April 2016 to March 2017.

SLSA	PLAs functioning sitting during the months	Cases pending at the beginning of the month	Cases received during the months	Cases settled during the months	Total Settlement Value (INR)
Karnataka	71414	12409	11248	4780	279057565.9

Mediation. Mediation is one of the most effective methods of providing expeditious justice to the satisfaction of the parties. The parties are facilitated to arrive at a mutually satisfactory settlement with the assistance of a third party mediator. **Following is the information showing the details of mediation cases settled from April 2016 to March 2017 (in INR).**

SLSA	ADR centre functional	Existing Mediation Centres other than ADR centres	No. of cases received during the months	No. of cases settled during the months	No. of cases pending at the end of the month
Karnataka	12	29	12945	3596	5586

Information with regard to Legal Services Clinics in jails and legal services to under trial prisoners (UTPs) as on 31.1.2016

State	Total No. of Jails	No. of Legal Services Clinics in jails	No. of UTPs interacted with Jail Clinics	No. of days in a week on which Legal Services Clinics function in the jails	Mechanism for the jail visiting lawyers/ PLVs to meet each UTP in jails
Karnataka	102	53	1765	Once a week	Panel lawyers meet

					UTPs in a separate chambers at the prison office or legal aid clinics inside the jail premises.
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Further, average time taken to Assign Legal Aid Lawyer to a prisoner in Karnataka is 2.67 days. In order to assign a legal aid lawyer to a prisoner, the prisoner needs to fill an application form, which has to be sent to the Legal Services Institution (LSI), after which the LSI assigns a panel lawyer. However, in one of the Districts in Karnataka state a legal aid application form was filled in August 2015 by a prisoner and received by the District Legal Service Authority (DLSA) in December 2016.

One of the important Initiative taken by the Ministry of Law & Justice during the last 2 years of the present Government is promotion of alternate Dispute Resolution Mechanism through National Legal Services Authority (NALSA) at the national level and State Legal Services Authorities at State level. In addition to provide free legal aid to the poor and weaker sections of the society and ensure justice to all, and under the ambit of Legal Services Authorities Act, National Legal Services Authority (NALSA) at the national level has been established to monitor and evaluate implementation of legal aid programmes and to lay down policies and principles for legal aid.

To conclude, in my view, legal profession is one of the noble professions and every lawyer has a professional and social responsibility to provide legal services to the 'under privileged' in the society. Pro Bono is our responsibility, not only as a lawyer but also as a human being. Therefore, all lawyers should aspire to provide at least few hours every year from our busy schedule for pro bono work.