



National Human Rights Commission

MINUTES OF MEETING

Open House Discussion on “Access to Legal Aid to Victims” held on 25th April, 2024 at Manav Adhikar Bhawan, NHRC, New Delhi

An Open House Discussion on “Access to Legal Aid to Victims” was organized on 25th April 2024 at Manav Adhikar Bhawan. The meeting was chaired by Justice Shri Arun Mishra, Hon’ble Chairperson, NHRC. The list of participants is **annexed**.

Shri Devendra Kumar Nim, Joint Secretary, NHRC, welcomed the chair of the event, senior officials of NHRC, domain experts and eminent dignitaries that participated in the meeting. He stated that the Constitution of India under Article 39A guarantees Access to legal aid as it provides for free legal aid to the poor and weaker sections of society and ensures justice for all. Further, Articles 14 and 22(1) of the Constitution also 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.



To achieve such a constitutional goal, the National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free legal services to the weaker sections of society and to ensure that opportunities for securing Justice are not denied to any citizen because of economic or other disabilities. The provision of effective



legal aid services can reduce pretrial detention rates and ensure equal access to justice for persons suspected and accused of a criminal offense. He stressed that improving the delivery of legal aid is essential for getting justice for all. He then highlighted the agendas for the discussion of the day

- i.) Legal Aid at Police Station Level;
- ii.) Identifying and addressing challenges faced by the victim in obtaining and receiving compensation in India and way forward; and
- iii.) Role of NGOs and Universities in ensuring access to Legal Aid to Victims.

Shri Bharat Lal, Secretary General, NHRC, in his address, said that it is vital to uphold the significance of providing legal aid to victims, especially during the FIR registration stage itself, wherein the police forces' comprehension and understanding of the NALSA scheme 2018 and Article 357A of CrPC is of utmost importance. He remarked that many victims lack education and legal awareness, thereby necessitating effective outreach strategies to overcome language barriers and ensure that they are made aware of the availability and accessibility of legal assistance. To achieve this goal, NALSA should play an active role in raising awareness and facilitating access to justice for victims.



In this regard, addressing the substantial gap in case reporting between police stations in various states and agencies like the Central Bureau of Investigation becomes the need of the hour. This involves shifting the mindset of police officials in dealing with less educated individuals and



sensitizing them to assist genuine victims in obtaining compensation and furthering the cause of justice as envisioned by the relevant constitutional provisions.

Shri Rajiv Jain, Hon'ble Member, NHRC, delivered the inaugural address where he highlighted that access to justice does not just revolve around judicial justice, but instead has a much broader ambit under the criminal justice system. The police are the first point of contact for the victim. This is why the availability of access to legal aid at the police station level becomes vital. The commission is bombarded with complaints related to people being brushed away from police station and their FIR not being registered. The complaints also include people stuck up in illicit custody.



Therefore, in most of these cases the commission found out that, the compensation to victims is considerably delayed despite statutory provisions being there under various Acts regarding the quantum and timeline of compensation disbursement. There seems to be a requirement for a central portal under the criminal justice system to monitor such cases of victims not being compensated in a timely manner. He stressed that there needs to be more efficacy on behalf of the judiciary, including advocates to educate the masses, especially victims on the new criminal laws, to make them aware about their right to legal aid. Therefore, appropriate stakeholder training needs to be focused upon.

Justice Shri Arun Kumar Mishra, Hon'ble Chairperson, NHRC, delivered the keynote address. He mentioned the importance of access to legal aid and how India has pioneered efforts towards the same for the last so many decades, upholding the significance of Articles 39A, 21



and 22, as envisioned by the makers of the Indian Constitution. Krishan Pal Singh was the law minister who introduced this system of law officers in legal aid, having independent act and setup. Later on, it is taken over by new legislation.



Whilst he lauded the vision of the lawmakers and efforts of NALSA towards providing the benefits of legal aid to victims, he highlighted that there still exists a considerable gap in implementation. Our legal aid is not only for victims but for every litigant. Accused persons who are in jail are not aware of their rights therefore, the jail authorities should take responsibility in providing legal aid in jail. For Jail appeals, a skeleton paper book should be prepared on the day of judgment with few witnesses. There should also be a paper book for imparting justice to the poorest of the poor. There should be a proper utilization of funds in each of the districts. As per Article 20 and 21 of the constitution of India, there are rights given to accused to seek proper consultation. There should be not be any hindrance on the basis of socio-economic condition of people in access to legal aid to victims. He remarked that more often than not, the poorest of the poor people are not aware of the rights available to them with regards to access to free legal aid. This is where he mentioned that awareness programs become extremely important.

He stated that upon visits by Members of the NHRC, it was observed that prisoners were not aware about the rights of legal aid available to them, hence it is vital for work to be done in this regard. To make victim compensation more effective, monitoring and supervision of compensation should be there. Role of NGOs should also be fixed and they should also assist in making victims aware about their right to legal aid.



Technical Session - I

Technical Session One revolved around the **Legal Aid at Police Station Level**. This session included speakers mainly from the Government of India and NALSA.

Shri Chandra Mohiyar Bathala, Director, (Access to Justice) Department of Justice, expressing his views on access to legal aid at police station levels across India. He mentioned the various welfare programmes and schemes like DISHA, LADS and more that have been implemented by NALSA. He stated that the approach of NALSA is directed towards pre-litigation activities, as legal aid comprehensively encompasses legal representation as well.



After a brief introduction, he was joined by **Shreya Arora Mehta, Delhi Higher Judicial Services/OSD, NALSA, Supreme Court of India** to deliver a joint presentation. She highlighted the challenges of the legal landscape with respect to access to legal aid and stated that the aim of NALSA is to preserve the rule of law, by concentrating its efforts on providing early access to justice to victims. Towards achieving this goal, NALSA has developed a software system comprising of online portals to ease the process of accessing timely justice. She mentioned that the body of officials at NALSA also includes paralegal authorities and pro-bono lawyers, to make the functioning of the body more efficient. She highlighted the fact that NALSA was committed to strengthening the paralegal officers in order to facilitate better



understanding of issues and aid efficient delivery of access to justice. The body was also engaged in assisting victims and making them understand the process of trials. In this regard, the National Legal Aid Helpline also plays a major role. NALSA has guidelines to aid and support early access to justice at pre arrest, arrest and remand stage. It also has a structural framework for providing legal service to prisoners, like through prison legal aid clinics and more such initiatives.

Mr. Bathala then continued the presentation and spoke about the Tele Law Programme that focuses on technology driven programmes available at grass root level in order to provide legal advice and access to justice at village level. NALSA encourages the pro-bono culture by providing the Nyaya Bandhu portal which is a platform for all senior advocates to engage with relevant cases. Programs like Nyaya Sahayak have also been introduced, which provide door-to-door awareness programmes to raise knowledge on legal aid services.

Upon conclusion of their joint presentation, the NHRC implored the concerned representatives to revamp and restructure their awareness programmes and policies to reach the intended beneficiaries, instead of just being aspirational in nature that conditionally reach only those who already have a certain level of judicial literacy.

Technical Session - II

Technical Session Two revolved around the **Identifying and addressing challenges faced by the victim for obtaining and receiving compensation in India and way forward.**

Shreya Arora Mehta, Judge, Delhi Higher Judicial Services/ OSD, NALSA, Supreme Court of India spoke about the role of legal services authorities in providing legal assistance, representation, protection and awareness to the victims. She highlighted the fact that women victims or their dependents who have suffered loss or injury as a result of an offense are eligible for compensation. There are certain factors considered for awarding compensation include the gravity of the offense, mental or physical harm, loss of educational or employment opportunities, and other rehabilitation needs. Immediate first-aid facilities, medical benefits, and interim monetary compensation are available, with specific amounts allocated for different situations such as acid attacks.



She also spoke about how courts can recommend compensation, or the victim or her dependents can apply for compensation. The compensation is paid from the Women Victim Compensation Fund, which comprises contributions from various sources, including budgetary allocations, donations, and contributions from companies under CSR. Lastly, she pointed out the challenges including low victim approach, touts duping victims, delay in funds disbursement, and non-traceability of victims. Thus, her suggestions include organizing awareness programs, strengthening coordination between authorities, and measures for victim reformation and rehabilitation



Advocate Sneha Singh, Child Rights Lawyer, spoke firstly, about the Compensation in Juvenile Justice (Care and Protection of Children) Act 2000 along with POCSO act where the guidelines and procedure are very elaborate with respect to children. However, the applicability of guidelines and its practice in each Juvenile Justice Board is very different i.e. who will apply the guidelines to the Magistrate or the Board? It is seen that the Board generally waits for Application for the compensation. In *Ankush Shivaji Gaikwad v State of Maharashtra*, apex court has stated that “there is no need to wait for the Application of Compensation on behalf of the victim”. She further added that, Section 357A of CrPC is not even complied with the JJB and the final order passed by JJB with respect to POCSO cases there has been no compensation awarded to the victim. Secondly, in another case the court has specifically said certain guidelines regarding the affidavit by the accused and Victim Impact Assessment Report has to be there for



assessing the quantum of compensation. Additionally, Rule 9 of POCSO Rule, 2020 specifically provides for compensation amount read with section 33.

In *Nipun Saxena v Union of India*, the compensation has to be gender neutral. But, when it comes to male child sexual survivors that the injuries are not there at the beginning but developed later on which are not documented neither by the CWC and there is no record. Therefore, giving compensation to a male child survivor is difficult in relation to JJB. Third, the implementation of the scheme of cash cards by DLSA which is used for refugees and foreign nationals is actually a challenge. Fourth, there is a huge difference with respect to the quantum of compensation in each district of Delhi. It is necessary to have some parity between the districts in awarding compensation. Fifth, awareness should be there for seeking compensation in case of death of survivors through lawyers. Lastly, she clarified that under Rule 9 sub-clause (6) of POCSO Rule 2020 any victim is eligible for any compensation or under any other state or central government the victim's family can apply for it and it will not affect any compensation awarded under the POCSO Act.



Advocate Aparna Bhat, highlighted that Acid attack survivors need serious medical help which is also expensive. To which court responded in a case dealt by her is that, 'as far as acid violence victims are concerned; within 15 days from the date FIR is registered or from the date of violence, whichever is earlier, they should get at least 1 Lakh as compensation and the balance 2 Lakh should be disbursed in 2-3 months.' This direction was an interim direction clarifying 3



lakh to be the minimum amount, till the time the government should come up with a scheme. The state can enhance such compensation subject to which they can form their policies. Some prominent considerations for the NHRC include those acid violence victims are allowed to have free treatment even in private hospitals, in addition to police stations. It would really be helpful if NALSA can frame some guidelines for the same.

In 1995, Supreme Court passed a judgment in Delhi Domestic working women's case, where one of the directions includes that there should be legal aid at police station for rape survivors and sexual assault victims. Legal Aid can be provided at police stations without being physically present i.e. through use of technology. She also highlighted that facilities in metropolitan areas such as Delhi and Bombay, should not be taken as yardstick because there are many areas where there is no legal aid present. It is also important to have quality lawyers assigned to such legal aid campaigns.

Especially, in rural areas where there are no male members, the problem of accessing legal aid to women, widows and children is quite problematic. Lastly, she spoke about a suggestion that legal aid should be there at Aanganwadi centers and primary health care centers where women frequently visit. Even if it is difficult to appoint a lawyer at these centers, nurses and other people can be trained to provide legal aid to women. We have to work on providing quality legal services and developing capacity building programs for lawyers.

Advocate Abha Singh, Social Activist and Former Bureaucrat (Indian Postal Services), mentioned that she has set up a platform called as "ASK (Assistance for Safai Karamchhari)" which works for assistance for widows in rural and far flung areas. She highlighted the fact that especially in Maharashtra not a single woman of Manual Scavenger got compensation. The major issue is that they are not aware of accessing victim compensation schemes. As per the NCRB reports, majority of the crime is by relatives and family members which is causing hindrance for these women to come up and access legal aid services. Pivotaly, there are a lot of lawyers who want to do pro bono services but they do not know how to. In reality, there is very little legal assistance provided to people. She suggested that Asha workers can be a great asset in rural areas where they can assist lawyers and bring victims to nodal agencies.

Dr. Rana Sengupta, Managing Trustee and CEO of Mine Labour Protection Campaign Trust, focused on the challenges in seeking legal aid for silicosis compensation. The first challenge would pertain to the onus on the lessee and not with the lessor to submit the notice of



opening to allow mine operations. Therefore 90% of the lessees do not inform or keep record of worker information and safety protocols which hinders DGMS in ensuring health and safety at the workplace. Therefore, in 2020 the Ministry gave recommendation to the state of Rajasthan that Submission of Notice of Opening by lessee should be a prerequisite condition to allow mining operations and to be linked to issuance of rawanas/loyalty receipts.

The second challenge is that the State has been saying that it is not their jurisdiction but the jurisdiction of the central government. However, under Section 28 of Minor Mineral Consideration Rule is that the Mine owner or the lessee has to provide records of the workers to the state labour department and none of them have been provided. So in that case, amendment is suggested under section 28 to make issuance of rawana/ royalty prerequisite to submission of notice of opening. The third challenge is that after 2019, the pneumoconiosis/ silicosis policy came in Rajasthan, with 27,000 people suffering from silicosis.

They have been given monetary relief but none of them have filed a case under the workmen compensation act. The provision in the said act says that the concerned doctor has to notify it, but since no record has been kept and shared with the state or central government, no doctor notifies such cases. Therefore, if the doctor notifies it then the workmen can go and claim compensation. Also, the workmen are not aware of how to claim compensation. Therefore, it is suggested that the Pneumoconiosis board should also submit a copy of the notification to the District Legal service authority upon a doctor's report of silicosis. This will aid silicosis victims to seek legal aid and assistance from DLSA for filing compensation cases under appropriate law.





Dr. Anjali Borhade, Director-Founder Disha Foundation, highlighted that the document discusses the identification and rehabilitation of victims, with a special focus on laborers and migrant workers in India. It highlights the lack of a centralized system for recording information on rehabilitated bonded laborers. Additionally, it mentions that between 2010 and 2014, 14,782 victims of trafficking for forced laborers were identified, with 5,828 rescued, and only 3,266 of them being bonded laborers. The legal issues faced by laborers are also addressed, including wage theft, bonded labor, sexual abuse, verbal and physical harassment, lack of basic facilities at the workplace, and lack of compensation for workplace accidents. The document emphasizes the need for legal interventions to support migrant workers, such as creating legal awareness and providing active support to solve legal cases. Efforts to address legal issues among laborers are outlined, including establishing a legal support cell, increasing awareness of legal issues, and providing mediation services. Collaboration with law colleges to organize internship programs for law students and the development of referral services for legal support in migrant communities are also mentioned. Furthermore, the document describes the initiation of a legal support cell for migrants by the District Legal Services Authority (DLSA) and the Disha Foundation, which addresses grievances of migrants on employment, wages, and related issues in Nasik, Nagpur, and Panaji. The DLSA has trained the Disha Foundation's team and migrant workers as paralegals to facilitate the process for illiterate laborers

Ms. Shanchobeni P. Lotha, Panel Lawyer, Wokha District Legal Services Authority, Nagaland mentioned that we are staying in a city like Delhi where there are all the facilities like transport, internet etc. However, she highlighted that in her district i.e. Wokha they do not have any proper transport except the road transport. Thus, she suggested that it will be beneficial if one female police official will be stationed in rural areas of Nagaland police stations. Another issue is that people from these rural areas do not have proper network services and so it is difficult for them to reach lawyers for accessing legal aid. If the particular beneficiary's contact number should be provided at police stations regulated through TELE – LAW scheme, it would be helpful for people from rural areas. Additionally, she categorically stated that it takes a lot of time to identify the victim and guide them as to how they can access victim compensation schemes. The victims also faced the challenge of refunding compensation awarded to them in case of acquittal or discharge of the accused. The victims also take a step back as apart from providing a small portion of money as interim compensation, the final compensation will only be awarded after disposal of the case.



Technical Session - III:

In technical session three, participants from central universities and other institutions offered diverse perspectives. The session's themes revolved around the **Roles of NGOs and universities in ensuring access to legal aid for victims.**

Advocate BT Kaul, Supreme Court of India and former Chairperson, Delhi Judicial Academy highlighted the pivotal role of students in facilitating access to legal aid for victims. He stressed the importance of sensitizing law students to marginalized issues and advocated for the integration of legal aid clinics with students and law schools to provide free legal assistance. He also suggested making clinical legal education mandatory in all institutions, emphasizing students' role as intermediaries between the state and legal authorities.

Audrey D'mello, Director of MAJLIS, focused on addressing the complexities within domestic violence and rape cases. She highlighted the challenges victims encounter, including police reluctance to file FIRs and the lack of post-FIR support. She stressed upon the backlog of domestic violence cases, underscoring the marginalization of women. Regarding medical terminations of pregnancy in rape cases, she stressed upon the difficulties that victims face in aborting pregnancies beyond 24 weeks under the MTP Act. This becomes more painful for minor victims. Audrey D'mello therefore advocated for a smoother system and enhanced coordination. Additionally, she critiqued the commercialization of matrimonial dispute resolution in courts,



citing the inundation of lawyers. She also pointed out the lack of coordination in victim compensation systems, proposing the establishment of a nationwide cadre of support persons to bridge gaps between agencies and provide comprehensive support to victims.



Ajay Pandey, Professor, Jindal Global Law School, effectively emphasized the pivotal role of law students in improving access to legal aid, echoing concerns regarding the commercialization of family courts. He suggested empowering students to assist victims in courtrooms as a viable solution. He advocated for the inclusion of a mandatory course on legal aid and access to justice in legal education, alongside highlighting the effectiveness of clinical legal education. He underscored the importance of law schools facilitating engagement, experiential learning, and motivation to adequately prepare students for legal practice. Emphasizing the students' significance as bridges between the legal system and the community. Further, he highlighted their potential in ensuring fair access to legal aid services, particularly for marginalized groups. However, he expressed disappointment with the lack of sincerity among many law schools in maintaining functional legal aid clinics. Often, these clinics exist only on paper and are operational solely during inspections by the Bar Council of India. To remedy this, he proposed that NHRC accompany inspections to enhance transparency and uphold the integrity of the legal aid system.



Darshana Mitra, Assistant Professor NLSIU, Bangalore emphasized the crucial importance of clinical legal education, emphasizing its alignment with our constitutional principles. She raised two pivotal questions: How can we better synchronize clinical legal education with constitutional mandates? And how can we encourage law students to actively participate in legal aid endeavors?

Presently, while legal clinics are compulsory in law schools, student engagement remains voluntary. She advocated for collaborative efforts among organizations like NALSA to tackle this issue. She delineated clinical legal education as involving student participation in legal clinics, aiding those unable to afford legal representation under the guidance of practicing lawyers, with performance assessed accordingly. A significant obstacle lies in ensuring universal access to legal assistance, given the scarcity of practicing lawyers. She proposed increased student involvement as a remedy. Through hands-on experience and performance evaluations, suggested that the quality of legal aid could be bolstered. However, several challenges persist. Students may encounter difficulties in assuming client accountability without the right to represent them in court. Additionally, regulatory constraints impede practicing lawyers from offering full-time supervision to students. She suggested a standardized legal curriculum, endorsed by the NHRC, to foster uniformity across institutions. This approach aims to streamline legal education and address nationwide disparities.

Dr. Kalpesh Kumar Gupta, Founder, Pro Bono India highlighted two key issues: the absence of compulsory human rights law in legal curricula and insufficient focus on victimology in



undergraduate programs. He proposed several solutions, including integrating human rights courses, organizing seminars and capacity training programs, establishing victim rights platforms, and promoting social legal initiatives like hackathons. Moreover, he recommended enhancing accessibility to resources such as NHMRC journals, simplifying internship applications, and fostering collaboration between institutions for online complaint processes.

Justice Shri Arun Mishra, Hon'ble Chairperson, NHRC, gave his concluding remarks by praising NALSA's efforts and also expressed confidence in its ability to continue its important work. The meeting aimed to discuss ways to enhance effectiveness, with NHRC focusing on implementing recommendations. It was suggested that as lawyers are not provisioned to work full time under the Advocates Act however, they could work part-time and thus some lectures and seminars could be conducted for them to engage and supervise the young law students with some flexibility. Legal Aid Clinics in colleges were found to be under performing, so it was proposed that they become mandatory and properly functional. Students could engage in surveys to educate people about their rights and available schemes. Effective enforcement of legal aid requires informing people about their rights before implementation. In closing, the chairperson thanked all participants for their contributions.

The meeting ended with the Vote of Thanks to the Chair and all the participants by, Lt Col Virendra Singh, Director, NHRC.





ANNEXURE

List of Participants

NHRC Officials/ Staff

1. Justice Shri Arun Kumar Mishra, Hon'ble Chairperson, NHRC (Chair)
2. Shri Rajiv Jain, Hon'ble Member, NHRC
3. Smt. Vijaya Bharathi Sayani, Hon'ble Member, NHRC
4. Shri. Bharat Lal, Secretary General, NHRC
5. Mr. Ajay Bhatnagar, Director General (Inv.), NHRC
6. Mr. Surajit Dey, Registrar (Law), NHRC
7. Mr. Devendra Kumar Nim, Joint Secretary, NHRC
8. Lt. Col. Virender Singh, Director, NHRC
9. Dr. Kanaklata Yadav, Consultant (Research), NHRC
10. Ms. Avani Verma, Junior Research Consultant, NHRC
11. Ms Niharika Sharma, Junior Research Consultant, NHRC
12. Ms. Arpita Sinha, Junior Research Consultant, NHRC
13. Mr. Abhishek Kmar Sharma, Junior Research Consultant, NHRC
14. Ms. Manisha Majumdar, Junior Research Consultant, NHRC
15. Ms. Ahana Ray, Junior Research Consultant, NHRC
16. Mr. Raghendra Singh, Junior Research Consultant, NHRC
17. Ms Swarna Singh, Junior Research Consultant, NHRC
18. Ms. Radhika Goel, Research Assistant, NHRC

Other Participants/Speakers

1. Shri Chandra Mohiyar Bathala, Director,(Access to Justice) Department of Justice
2. Smt. Shreya Arora Mehta, Judge, Delhi Higher Judicial Services/OSD, NALSA, Supreme Court of India
3. Advocate Sneha Singh, Child Rights Lawyer
4. Advocate Aparna Bhat, Lawyer, New Delhi
5. Advocate, Abha Singh, Social Activist and Former Bureaucrat (Indian Postal Service)
6. Dr Rana Sengupta, Managing Trustee and CEO of Mine Labour Protection Campaign Trust
7. Dr. Anjali Borhade, Director-Founder of Disha Foundation
8. Ms. Shanchobeni P Lotha, Panel lawyer, Wokha District Legal Services Authority, Nagaland
9. Dr. B.T. Kaul, Advocate, Supreme Court of India and Former Chairperson, Delhi Judicial Academy
10. Adv Audrey D'mello, Director, MAJLIS
11. Ajay Pandey, Professor, Jindal Global law School
12. Ms. Darshana Mitra, Assistant Professor, NLSIU, Bangalore
13. Dr. Kalpesh Kumar L Gupta, Founder, Pro Bono India